

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Oct. 31–Nov. 6, 2022)

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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 granted certiorari in four cases, two of which are consolidated:

- **Indian Law:** The Supreme Court granted certiorari in two cases from the Ninth Circuit, consolidated for review. The Court is asked whether the United States has a judicially enforceable trust responsibility under treaties with the Navajo Nation to ensure the Nation has an adequate water supply, including through waters supplied from the mainstream Colorado River (*Arizona v. Navajo Nation*; *Dep’t of the Interior v. Navajo Nation*).
- **Intellectual Property:** The Supreme Court agreed to review a case from the Federal Circuit over whether the Patent Act’s enablement requirement ([35 U.S.C. § 112](#))—which requires that a patent’s specification include a written description sufficient “to enable any person skilled in the art . . . to make and use the” invention—must enable a skilled person to make and use the full scope of the invention’s embodiments without substantial time and effort (*Amgen v. Sanofi*).

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- **Intellectual Property:** The Supreme Court granted certiorari in a case from the Tenth Circuit where it asked to consider the extraterritorial reach of the [Lanham Act](#), which provides civil remedies for infringement of U.S. trademarks, specifically whether it reaches purely foreign sales, an issue that has caused a split among the circuits (*Abitron Austria GmbH v. Hetronic Int'l, Inc.*).

The Supreme Court also took action in response to an emergency application:

- **Separation of Powers:** The Court denied an application to block enforcement of a subpoena directing a U.S. Senator to testify as part of a Georgia grand jury investigation into activities surrounding the 2020 presidential election. (Last week, Justice Clarence Thomas granted an administrative stay pending further Court action on the application.) As discussed in an earlier edition of the *Congressional Court Watcher*, the Eleventh Circuit affirmed a federal district court order that upheld the subpoena for the Senator's testimony on certain matters, while quashing the subpoena to the extent it covered topics the district court deemed privileged under the Speech or Debate Clause, such as a Senator's legislative fact-finding. The Eleventh Circuit also observed that the Senator could assert his Speech or Debate Clause privilege in response to specific questions that implicated protected legislative activities. The Supreme Court noted these parameters when concluding that a stay or injunction was unnecessary to safeguard the Speech or Debate Clause privilege (*Graham v. Fulton Cnty, Special Purpose Grand Jury*).

Two Members of the Court, in their capacity as [Circuit Justices](#), also took action regarding emergency applications in cases of possible congressional interest:

- **Education:** Justice Amy Coney Barrett denied an [emergency application](#) to enjoin implementation of the Biden Administration's student loan cancellation program pending the Seventh Circuit's ruling on an appeal challenging that program. A district court within the Seventh Circuit dismissed a plaintiff's challenge to the program on standing and mootness grounds, without ruling on the underlying merits. Justice Barrett denied an emergency application in a [similar challenge](#) last month and the Eighth Circuit issued an administrative stay in a [different case](#), temporarily barring the discharge of loans under the program while it considers the challengers' motion (*Garrison v. Dep't of Education*).
- **Separation of Powers:** Chief Justice John Roberts issued an administrative stay in a case from the D.C. Circuit holding that the House Ways and Means Committee may review former President Donald Trump's tax returns for the years 2015 to 2020. As discussed in a prior edition of the *Congressional Court Watcher*, the D.C. Circuit rejected the former President's arguments against the legitimacy of the congressional request for information, holding the request did not exceed Congress's investigative powers because it identified a legitimate legislative purpose and did not violate separation-of-powers principles (*Trump v. Committee on Ways & Means*).

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.

- **Arbitration:** In a case involving an arbitration award issued by a Chinese arbitral panel against a U.S. distributor, the Third Circuit, in remanding the case, agreed with the lower court that the [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#), which enables recipients of a foreign arbitration award to petition a U.S.

district court for confirmation, did not compel deference to a foreign arbitral panel's finding of arbitrability. However, the Third Circuit found that the district court did not adequately explain its implicit conclusion that emailed correspondence between the parties over an unsigned agreement containing an arbitration clause was not an "exchange of letters" signifying assent to the agreement for purposes of the New York Convention. The circuit court remanded the case for further proceedings while taking no position on the dispute's ultimate arbitrability (*Jiangsu Beier Decoration Mater. v. Angle World LLC*).

- ***Civil Procedure:** The First Circuit added to a circuit split over the timeliness standard under 42 U.S.C. § 406(b) for attorneys seeking fees for court representation in successful actions for past-due Social Security benefits. Section 406(b) does not provide an express time limit for fee requests, and reviewing courts have adopted differing approaches. The First Circuit joined the minority view that a motion for an award of fees must be filed in a "reasonable time" after the agency award of benefits under Federal Rule of Civil Procedure 60(b)'s equitable standards for motions concerning relief from a final judgment or order. The court rejected the prevailing view that, with potential equitable adjustments, a petition must be filed within 14 days of a final and appealable judgment by a district court under Rule 54(d)(2) (*Pais v. Kijakazi*).
- ***Criminal Law & Procedure:** The Fifth Circuit added to a circuit split over the meaning of 18 U.S.C. § 3553(f), the "safety valve" exception for mandatory minimum sentences available for certain drug trafficking and unlawful possession offenses. Section 3553(f), as amended by the First Step Act, provides that the exception may apply to persons convicted of covered offenses who do "not have—(A) more than 4 criminal history points . . . ; (B) a prior 3-point offense . . . ; and (C) a prior 2-point offense." Joining the Eighth Circuit, the Fifth Circuit held that the word "and" between subsections (B) and (C) should be read distributively, so that defendants are ineligible if they fail *any* of the three conditions. The court rejected the Ninth Circuit's interpretation under which defendants are eligible so long as they do not meet *all* three conditions (*United States v. Palomares*).
- **Criminal Law & Procedure:** In denying a death-row inmate's application to stay his execution, the Fifth Circuit held that the federal courts lack jurisdiction under 18 U.S.C. § 3599(e) to compel state officials to unshackle the inmate during expert evaluations that the inmate's counsel had scheduled. The court held that § 3599, which permits federal courts to authorize funding for legal representation and reasonably necessary services to an indigent defendant facing the death penalty, does not provide federal courts with jurisdiction to oversee funded services (*Beatty v. Lumpkin*).
- **Election Law:** The Eighth Circuit upheld a preliminary injunction blocking enforcement of a South Dakota law setting new information disclosure requirements for persons paid to circulate initiative petitions on First Amendment grounds. The plaintiff's First Amendment challenge triggered exacting scrutiny, a standard of review slightly lower than strict scrutiny. The court held the law was unlikely to satisfy this standard of review because it affected core political speech by limiting the number of persons able to circulate petitions for political causes, and discriminated against paid circulators for reasons unrelated to legitimate state interests. The court also held that other factors supported maintaining the injunction pending a final decision in the case (*Dakotans for Health v. Noem*).
- **Election Law:** The Eleventh Circuit directed a federal district court to dismiss as moot a Member of Congress's motion to enjoin a state court's consideration of a challenge to her

qualification to be re-elected to Congress based on her alleged encouragement of disruption of Congress's counting of electoral votes on January 6, 2021. A group of voters brought suit in state court claiming these alleged actions rendered the Member ineligible for re-election under Section Three of the Fourteenth Amendment, which disqualifies from future federal or state office certain persons who have "engaged in insurrection or rebellion against" the United States unless Congress by a two-thirds vote in each house removes such disability. The circuit court held the case was moot because the proceedings challenging the Member's qualifications had concluded and she prevailed at all stages of the litigation and was placed on the ballot for the upcoming election (*Greene v. Secretary of State for the State of Georgia*).

- **Immigration:** The Second Circuit upheld the Board of Immigration Appeals' (BIA's) denial of a petitioner's withholding-of-removal claim, where the BIA held that the petitioner failed to show his ethnicity was "at least one central reason" motivating his alleged persecution. The governing statute, 8 U.S.C. § 1231(b)(3)(A), bars the removal of an alien whose "life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." The majority held that § 1231(b)(3)(A) is ambiguous as to the showing required to establish that a covered ground, like ethnicity, motivated the persecutor. Applying the *Chevron* framework, the majority held that the BIA's interpretation of the withholding-of-removal statute as incorporating the same "one central reason" standard used in asylum cases for determining motive was reasonable and entitled to deference (*Quitizaca v. Garland*).
- **Immigration:** The Ninth Circuit largely upheld a district court's permanent injunction requiring U.S. Citizenship and Immigration Services (USCIS) to adjudicate within 180 days applications for Special Immigrant Juvenile (SIJ) status filed by aliens with a Washington state court order. SIJ status is a form of immigration status made available to certain abused or abandoned juveniles, with petitions based on a predicate state court order. Although a provision codified at 8 U.S.C. § 1252(f)(1) generally bars lower courts from requiring federal officials to take or refrain from taking certain immigration-related actions under specified chapters of the U.S. Code, the circuit court recognized that the slightly different version of the jurisdictional bar in the *Statutes at Large* was controlling. The jurisdictional bar found in the *Statutes at Large* does not prevent courts from enjoining or restraining the operation of the provision relating to SIJ adjudications, found in § 235(d)(2) of the *William Wilberforce Trafficking Victims Protection Reauthorization Act*. While deciding that the district court did not err in entering the injunction that USCIS comply with the 180-day statutory deadline for adjudication, the circuit panel majority held that the lower court abused its discretion in allowing SIJ petitioners to toll the deadline if USCIS requested more evidence or issued a notice of intent to deny their petition (*Galvez v. Jaddou*).
- **Tax:** In ruling that an Internal Revenue Service (IRS) collection action against a taxpayer was timely, the Third Circuit considered the meaning of 26 U.S.C. § 6330(e)(1), which tolls the statute of limitations for certain actions when IRS administrative hearings "and appeals therein, are pending." The court ruled that "appeals therein" could include a taxpayer's writ of certiorari to the Supreme Court. In this case, where such a petition was filed, the appeal remained "pending" until the Supreme Court denied the petition (*United States v. Weiss*).

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