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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Nov. 28–Dec. 4, 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

The Supreme Court agreed to hear one new case in response to an emergency application:

- **Education:** The Supreme Court agreed to review the Eighth Circuit's entry of a nationwide injunction pausing the implementation of the Biden Administration's student loan cancellation program, in a case brought by six states. The Administration had asked the Supreme Court to vacate or narrow the injunction, but the Court instead granted certiorari before judgment in the lower courts and agreed to consider both whether the states have Article III standing and whether the program is lawful. The Court intends to hear oral argument in February 2023. The injunction remains in place pending the Court's resolution of the case (*Biden v. Nebraska*).

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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.

- ***Criminal Law & Procedure:** The Fourth Circuit held that an inmate does not need to exhaust an internal Bureau of Prisons (BOP) process for seeking compassionate release before moving for compassionate release in federal district court. The compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), permits a federal prison inmate to petition for compassionate release in federal court after either exhausting "all administrative rights to appeal a failure of the [BOP] to bring a petition on his behalf" in federal district court "or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." The Fourth Circuit held that, under Section 3582, a federal prison inmate could file a motion with the district court seeking compassionate release so long as the inmate made an initial request to the warden and waited 30 days before filing the motion in district court, even if the motion identifies grounds beyond those included in the request. The Fourth Circuit nevertheless affirmed the district court's denial of the inmate's motion because the motion challenged the validity of his criminal conviction and sentence. Parting with the First Circuit, but joining every other circuit to have addressed the issue, the Fourth Circuit further held that the federal habeas corpus statute, 28 U.S.C. § 2255, provides the exclusive means for collaterally challenging a criminal conviction (*United States v. Ferguson*).
- **Criminal Law & Procedure:** The Fourth Circuit held that Section 404(b) of the First Step Act did not give courts power to retroactively reclassify a defendant's conviction from a felony to a misdemeanor. The First Step Act permits a court to reduce a defendant's sentence for certain specified offenses. The Fourth Circuit held that reclassifying a conviction is not part of a "sentence," and as a result, the First Step Act did not empower the district court to reclassify a conviction (*United States v. Payne*).
- **Criminal Law & Procedure:** A divided Fourth Circuit vacated one of a defendant's two convictions for lying to the FBI, in violation of 18 U.S.C. § 1001(a)(2), as "multiplicitous." Both convictions stemmed from the same interview with the FBI and relied solely on communications between the defendant and the same confidential informants. The majority held that the scope of statement that is distinctly punishable, called the allowable unit of prosecution, under Section § 1001(a)(2) is ambiguous, and so applied the rule of lenity to vacate the second conviction (*United States v. Smith*).
- **Health:** The Sixth Circuit affirmed a preliminary injunction issued by the district court preventing the Air Force from punishing service members for refusing to get vaccinated against COVID-19 on religious grounds. Eighteen service members filed suit against the Air Force claiming that the Air Force's COVID-19 vaccine mandate substantially burdens their religious exercise in violation of the Religious Freedom Restoration Act (RFRA). RFRA prohibits the government from "substantially burden[ing] a person's exercise of religion" unless the government shows its action is: (1) "in furtherance of a compelling governmental interest"; and (2) "the least restrictive means of furthering that. . . interest." The Sixth Circuit held that the Air Force likely cannot satisfy this test because it asserted only generalized interests in mandating vaccines rather than addressing the compelling interests in mandating vaccines for the specific service members who requested exemptions. The court further held that the requirement that service members get vaccinated or be sanctioned is not the least restrictive means of furthering its interests. The court also affirmed the district court's decision to extend the injunction to an entire class of similarly situated service members (*Doster v. Kendall*).

- **Immigration:** A divided Fourth Circuit panel denied an alien's petition for review of a Board of Immigration Appeals (BIA) decision that she could not adjust her status to that of a conditional permanent resident without an affidavit of support from her former husband, a U.S. citizen. The husband had originally petitioned for a K-1 visa for the alien and initially filed an affidavit of support for her adjustment of status, but later withdrew his affidavit as they divorced. The BIA had held that abuse and death are the only statutory exceptions to the requirement that the affidavit in support of adjustment must come from the original K-1 petitioner, neither of which applied to this alien. The Fourth Circuit majority held that the Immigration and Nationality Act does not expressly speak to the relevant issues and that the BIA's decision was entitled to *Chevron* deference (*Song v. Garland*).
- **Labor & Employment:** The First Circuit held that arbitration agreements in employment contracts between couriers and an online food-ordering and delivery platform are subject to the Federal Arbitration Act (FAA). The FAA provides that written arbitration agreements that concern "transaction[s] involving commerce" are valid and enforceable. The FAA, however, exempts employment contracts of certain classes of workers who are "engaged in foreign or interstate commerce." The court held that the couriers in this case were involved in commerce by delivering meals and other sundries to local customers, but were not engaged in interstate commerce because that phrase applies only to workers who play a necessary role in transporting goods across state lines (*Immediato v. Postmates*).
- **Labor & Employment:** A divided Federal Circuit panel held that the Fair Labor Standards Act (FLSA) does not require the government to pay government employees during a government shutdown. The FLSA requires employers, including the federal government, to pay covered employees a minimum wage for work performed, which courts have interpreted as a mandate that the employers ordinarily pay wages by the employees' regular payday. The majority held that a provision of Anti-Deficiency Act prohibits the government from paying employees during a government shutdown, and, therefore, the government meets its FLSA obligations when it pays employees at the earliest possible date after funding is restored. (*Avalos v. United States*).
- **Labor & Employment:** A divided Federal Circuit panel held that the Border Patrol Agent Pay Reform Act (BPAPRA) and the Back Pay Act do not require the government to make payments to border patrol officers during a government shutdown. The BPAPRA directs the government to pay border patrol agents at the agent's assigned level of pay, 5 U.S.C. § 5550(b)(2)(B), which the plaintiffs argued implicitly requires timely payment of the agent's salary. The Back Pay Act provides that an agency employee that loses pay as the result of an "unjustified or unwarranted personnel action" is entitled to back pay, interest, and attorney fees. The majority determined that delaying employees' pay until the earliest possible date after a government shutdown ends does not violate either the BPAPRA or the Back Pay Act because the Anti-Deficiency Act prohibits the government from making payments during a lapse in appropriations (*Abrantes v. United States*).
- **National Security:** The Eleventh Circuit vacated a district court's order requiring documents seized from former President Donald Trump's Mar-a-Lago property to be reviewed by a special master. Circuit case law permits a district court to exercise equitable jurisdiction over a pre-indictment motion to return seized property only when certain factors are met, including the callous disregard of the plaintiff's constitutional rights. The Eleventh Circuit noted that no party argued this key factor had been met and determined that the remaining factors also weighed against exercising jurisdiction. The court rejected former President Trump's arguments in favor of refashioning the equitable jurisdiction analysis or creating a special exception based on his former office (*Trump v. United States*).

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