



Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Feb. 21, 2023–Feb. 26, 2023)

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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.

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Decisions of the Supreme Court

Last week, the Supreme Court issued decisions on the merits in three cases for which it heard oral arguments:

- **Bankruptcy:** The Supreme Court unanimously held that a Bankruptcy Code exception to discharge for debts obtained by fraud applied even though the debtor’s spouse, and not the debtor herself, committed fraud. [Section 523\(a\)\(2\)\(A\)](#) of the Bankruptcy Code bars discharge of any debt obtained by “false pretenses, a false representation, or actual fraud.” The Court reasoned that section 523(a)(2)(A), written in the passive voice, reflected legislative intent to apply the discharge exception for fraud regardless of the wrongdoer. The Court observed that Congress had previously deleted an express reference to the debtor from an earlier version of the exception. Citing its 1991 decision in *Grogan v. Garner*, the Court ruled that Congress placed the interests of creditors in recovering debts obtained by fraud above the interests of debtors in declaring bankruptcy and getting a fresh start (*Bartenwerfer v. Buckley*).

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- **Criminal Law & Procedure:** The Supreme Court ruled 5-4 in favor of a petitioner sentenced to death who wanted to raise a due process claim about jury instructions in a successive Arizona post-conviction relief proceeding. The petitioner argued that, under the Supreme Court’s decision in *Simmons v. South Carolina*, he was entitled to inform a jury that a life sentence in Arizona would be without parole. He also invoked *Lynch v. Arizona*, where the Supreme Court affirmed that *Simmons* applied in Arizona. The Arizona Supreme Court had held that under [Arizona Rule of Criminal Procedure 32.1\(g\)](#), *Lynch* did not constitute a significant change in law, a prerequisite to raising a successive petition, because *Lynch* changed the law’s application but not the law itself. The Supreme Court disagreed. It held that the Arizona Supreme Court’s decision rested on a novel and unsupported interpretation of Rule 32.1(g), rendering the decision inadequate to preclude review of the petitioner’s due process claim. The Court accordingly vacated the Arizona Supreme Court’s decision (*Cruz v. Arizona*).
- **Labor & Employment:** In a 6-3 decision, the Supreme Court held that high-earning workers paid solely on a daily rate are not compensated on a “salary basis,” and therefore are entitled to receive overtime pay under the [Fair Labor Standards Act](#) (FLSA). A worker on an offshore oil rig, who was paid a daily rate instead of a salary but earned over \$200,000 annually, sued his employer for overtime pay. The employer argued that the plaintiff was exempt from FLSA overtime pay requirements because he was “a bona fide executive” under [29 U.S.C. § 213\(a\)\(1\)](#). The Department of Labor generally [requires](#) three tests to be met for an employee to qualify as a bona fide executive: (1) a salary basis test, which requires that an employee receive a predetermined and fixed salary that does not vary with the amount of time worked; (2) a salary level test; and (3) a job duties test. The Court concluded that, even though the rig worker received a pay check on a biweekly basis, he was not paid on a salary basis as defined in [29 C.F.R. § 541.602](#), which applies only to employees with fixed compensation regularly paid by the week or longer and not to workers paid according to a daily rate (*Helix Energy Solutions Group, Inc. v. Hewitt*).

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.

- **Administrative Law:** The Ninth Circuit held that, under the [Administrative Procedure Act](#) (APA), courts may not vacate agency actions in conjunction with granting requests for voluntary remands without first holding the agency actions unlawful. The case involved a challenge to an Environmental Protection Agency (EPA) regulation under the [Clean Air Act](#) (CAA). In 2020, EPA promulgated new regulations implementing [Section 401](#), which obligates an applicant for a federal license or permit for activity that may cause a discharge into the navigable waters of the United States to obtain certification (or waiver of certification)—usually from the state in which the discharge originates—that the discharge will comply with applicable provisions of certain sections of the CAA. After a change in administration, EPA moved for voluntary remand so that it could reconsider the rule. The district court granted EPA’s motion and granted the plaintiffs’ request to vacate the regulation. On appeal, the Ninth Circuit interpreted the APA as foreclosing any authority of courts to vacate agency actions not first held unlawful. Because the APA sets forth a detailed [process for repealing rules](#), the court held that it could not endorse a judicial practice that would help agencies circumvent that process.

The Ninth Circuit therefore reversed the district court's order and sent the case back for reconsideration of EPA's remand motion (*In Re: American Rivers, et al. v. American Petroleum Institute, et al.*).

- **Civil Rights:** The D.C. Circuit held that the District of Columbia Department of Behavioral Health's policy of restraining civilly committed patients during transportation to court hearings did not violate a civilly committed plaintiff's Fifth Amendment rights. The court avoided taking sides in a circuit split over the proper standard for weighing civilly committed patients' Fifth Amendment claims of unconstitutional restraint. The court acknowledged that some circuits disagree on whether to apply the standards announced by the Supreme Court in *Youngberg v. Romeo*, which focuses on whether the government employed professional judgment in restraining a patient, and *Bell v. Wolfish*, which asks whether the restraint related to a legitimate nonpunitive purpose, or whether courts should generate a standard using both cases. Ruling in favor of D.C. government officials here, the court found it unnecessary to take a side in the circuit split, holding that their decision to restrain the plaintiff satisfied both *Youngberg* and *Bell* (*Harris v. Bowser*).
- **Criminal Law & Procedure:** The Eighth Circuit upheld a criminal defendant's mandatory minimum sentence under a provision of the [Armed Career Criminal Act](#) (ACCA) establishing heightened penalties for a defendant convicted of possessing a firearm as a felon under 18 U.S.C. § 922(g)(1) who had three prior convictions "for a violent felony or a serious drug offense." The circuit court rejected the defendant's argument that his earlier conviction for unlawfully discharging a firearm from a motor vehicle was not a "violent felony" under the ACCA (*United States v. Harris*).
- **Freedom of Information Act (FOIA):** The D.C. Circuit held that certain documents that were part of an Internal Revenue Service (IRS) investigation into alleged misconduct by an attorney who represents clients before the IRS were protected from disclosure under FOIA, while other documents were not. The attorney subject to the misconduct proceedings sued the IRS under FOIA seeking disclosure of four documents pertaining to memos written by IRS investigators. The court determined that two documents contained predecisional and deliberative information protected from disclosure under FOIA Exception 5. The court reasoned that some of the investigators' recommendations in these documents were not adopted by the IRS and their disclosure could have a chilling effect on employees freely making recommendations in investigations and could also mislead the public as to the government's view of the alleged misconduct. It further determined that one document and most of another must be disclosed under FOIA because they simply contained descriptions of facts in the case (*Waterman v. IRS*).
- **Labor & Employment:** The Ninth Circuit affirmed a district court's dismissal, without prejudice, of the plaintiff's reprisal claim against her defense contractor employer under the [Defense Contractor Whistleblower Protection Act](#) (DCWPA). The Ninth Circuit held that to survive a motion to dismiss under the DCWPA, a plaintiff must plausibly allege that (1) she made a disclosure that she reasonably believed was evidence of a violation related to a Department of Defense contract; and (2) her employer discharged, demoted, or otherwise discriminated against her because of that disclosure. The court explained that a violation of law is related to a defense contract if it relates to its purpose or affects the services provided by the contractor to the agency. A disclosure is protected if a disinterested observer with knowledge of the operative facts would reasonably conclude that the disclosure evidences a violation of law related to the contract in this manner. The court held that the plaintiff did not plausibly allege a reasonable belief that her disclosure—her reporting of a shove by an intoxicated co-worker at an embassy

- compound—shared a nexus with the defense contract. According to the court, the complaint’s allegations did not encompass a disclosure sufficiently related to the contract to give rise to DCWPA protection (*Kappouta v. Valiant Integrated Services*).

Author Information

Michael D. Contino
Legislative Attorney

Andreas Kuersten
Legislative Attorney

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