

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Apr. 24–Apr. 30, 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.

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 two cases:

- **Speech:** In two cases, the Court is asked when a public official’s social media activity, including deleting comments or blocking users critical of that official, violates the First Amendment. One case is a Ninth Circuit decision holding that defendant school board members, who created publicly accessible social media pages first to promote their campaigns and then, post-election, to communicate with constituents about the carrying out of their duties, violated the First Amendment when they blocked certain critical commenters from these pages (*O’Connor-Ratcliff v. Garnier*). The other case is from the Sixth Circuit, which decided that a city manager’s deletion of comments critical of city policies on his personal Facebook page was not state action because the public official did not use the page to fulfill any actual or apparent duty of his office, and he did not rely on government authority to maintain it (*Linkde v. Freed*).

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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.

- **Antitrust:** The Ninth Circuit affirmed a district court decision concluding that Apple did not violate federal antitrust law by limiting app distribution on iOS devices to its App Store only, and requiring in-app purchases (IAPs) on iOS devices to use Apple's in-app payment processor. The panel determined that the district court did not clearly err when it held that the plaintiff failed to show that Apple could improve device security and user privacy or monetize its intellectual property through a substantially less restrictive alternative to the challenged restrictions. While the court sided with Apple on the federal antitrust claims, it rejected the company's cross-appeal challenging a finding that restrictions on communications over out-of-app payment options violated California competition law (*Epic Games, Inc. v. Apple, Inc.*).
- **Arbitration:** The Third Circuit held that Uber drivers' arbitration agreement with the rideshare company was enforceable under the [Federal Arbitration Act \(FAA\)](#). The court reasoned that the FAA's [exception](#) for contracts of transportation workers "engaged in foreign or interstate commerce" should be construed to cover persons whose work is primarily devoted to movement across state boundaries. Joining other circuits that have considered the FAA's application to rideshare services, the court held that Uber drivers' occasional transport of passengers across state lines was insufficient to fall under the FAA's exception (*Singh v. Uber Techs, Inc.*).
- **Criminal Law & Procedure:** The Eighth Circuit reaffirmed circuit precedent that non-retroactive changes to sentencing laws, such as the First Step Act's elimination of mandatory life sentences for certain drug offenses, does not provide a basis for compassionate release under [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#). The court rejected the argument that the Supreme Court's decision in *Concepcion v. United States* overruled circuit precedent, as *Concepcion* addressed whether a court may consider intervening changes in law or fact under a different provision for sentencing reductions, and did not involve grounds for compassionate release (*United States v. Rodriguez-Mendez*).
- ***Firearms:** Adding to a circuit split, a Sixth Circuit panel held that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) lacked statutory authority to promulgate a [2018 rule](#) classifying bump-stock type devices—defined by the ATF as devices that automatically shoot more than one shot by a single function of the trigger—as a "machinegun." The designation rendered bump-stock possession a criminal offense under the [Gun Control Act of 1968](#), which bars persons from possessing a machinegun. The court determined that the agency's definition of a "machinegun" as applied to bump stocks is ambiguous, declined to defer to the ATF's definition, and concluded that the rule of lenity applicable to criminal offenses required the court to interpret the term narrowly (*Hardin v. Garland*).
- **Election Law:** A divided Eleventh Circuit reversed a district court ruling striking down provisions of Florida's election law regulating ballot drop boxes and the delivery of voter-registration forms by third-party organizations, but partially affirmed the lower court's ruling that a provision regulating the solicitation of voters at the polls was unconstitutional. The panel majority reversed the lower court's judgment that the challenged provisions were intended to discriminate against Black voters and violated the Fourteenth and Fifteenth Amendments and [Section 2 of the Voting Rights Act \(VRA\)](#).

The majority also reversed the lower court's setting of a preclearance requirement under VRA Section 3(c), under which the district court would retain jurisdiction for 10 years to review any new election laws on similar topics passed by Florida. The circuit panel, however, agreed with the lower court that the solicitation provision's prohibition on "engaging in any activity with the . . . effect of influencing a voter" was unconstitutionally vague (*League of Women Voters of Florida, Inc. v. Florida Sec'y of State*).

- **Environmental Law:** A divided Ninth Circuit held that [Presidential Proclamation 9564](#), issued to expand the Cascade-Siskiyou National Monument in southwestern Oregon, was a valid exercise of the President's authority under the [Antiquities Act](#). The majority held that the President's authority under the Act, used here to expand the national monument into southwest Oregon timberlands, was not circumscribed by the [Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act](#), which sets forth the Secretary of Interior's responsibilities for the management of those timberlands (*Murphy Co. v. Biden*).
- **Immigration:** The Fifth Circuit upheld the Board of Immigration Appeals' determination that [8 U.S.C. § 1227\(a\)\(1\)\(H\)](#), which allows waiver of certain removability grounds "directly resulting from . . . fraud or misrepresentation" at the time of admission, cannot be used to waive [8 U.S.C. § 1227\(a\)\(3\)\(iii\)](#), which renders removable those aliens convicted of visa fraud under [18 U.S.C. § 1546](#). The court observed that, by its terms, the fraud waiver only applies to grounds listed in subparagraph (a)(1), so it would not reach (a)(3)(iii). Additionally, the court viewed the removability ground under § 1227(a)(3)(iii) as not "directly resulting . . . from fraud or misrepresentation," because its application turns on the alien's *criminal conviction*, unlike other fraud-related removability grounds for which a conviction is not required (*Reese v. Garland*).
- **Labor & Employment:** A divided Fourth Circuit held that a subcontractor's inventory of materials was not "labor" for purposes of the [Miller Act](#), which requires many contractors working on government projects to furnish bonds to those who provided labor but were not paid because of a dispute. Looking to the statute's historical context and the sparse caselaw surrounding it, the majority held that "labor" under the Act was meant to cover work involving physical toil and the on-site supervision of such work, rather than mental toil (*United States ex rel. Dickson v. Fid. & Deposit Co. of Maryland*).
- **Labor & Employment:** The Fourth Circuit held that a railroad worker's race discrimination claim under [Title VII of the Civil Rights Act](#) was subject to the arbitration requirements of the [Railway Labor Act \(RLA\)](#). The RLA mandates arbitration of "minor disputes" over interpretation and application of collective bargaining agreements (CBAs) if those disputes are not resolved through intra-carrier grievance procedures. The court held that plaintiff's Title VII claim of differential treatment fell under the RLA's scope, because it would require a court to construe CBA provisions on employee discipline and reinstatement (*Polk v. Amtrak Nat'l R.R. Passenger Corp.*).

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- **Labor & Employment:** A divided Fifth Circuit upheld a prehearing withdrawal of an unfair labor practice complaint by the National Labor Relations Board (NLRB) against two labor unions. The NLRB General Counsel (GC) issued the complaint after an employer initially filed an unfair labor practice charge with the NLRB against the unions. After President Biden removed the GC and an Acting GC was instated, the complaint was withdrawn. Deciding it had jurisdiction over the case, the circuit court held that the President had authority to remove the GC and that the Acting GC's designation was valid. The majority further decided that the NLRB permissibly determined that the Acting GC had discretion to withdraw the complaint (*United Nat. Foods, Inc. v. NLRB*).
- **Labor & Employment:** Sitting en banc, the Federal Circuit overruled circuit precedent on the elements necessary for an [Equal Pay Act](#) claimant to establish a prima facie case, aligning the circuit with other circuits and Supreme Court precedent. Under the standard adopted, to make a prima facie case, a claimant must show that an employer pays different wages to persons of opposite sexes for equal work on jobs with similar working conditions that require equal skills and responsibilities. The en banc court abandoned an additional element that the claimant must show that a pay differential is either historically or presently based on sex (*Moore v. United States*).
- **Trade:** Reversing the Court of International Trade, the Federal Circuit upheld an expedited review process established by the Secretary of Commerce for use following countervailing duty (CVD) investigations. The expedited process allows non-investigated exporters and producers of covered products to request individualized reductions in country-wide CVD rates. The court held that the [Uruguay Round Agreements Act](#) enabled the Department of Commerce to establish this framework, now located in [19 C.F.R. § 351.214\(l\)](#) (*Committee Overseeing Action for Lumber Int'l Trade Investigations or Negotiations v. United States*).

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