

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (May 15–May 21, 2023), Part 1

May 22, 2023

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.

This week’s *Congressional Court Watcher* is divided into two parts because of the number of notable decisions issued over the past week. This Legal Sidebar (Part 1) discusses Supreme Court activity from May 15 through May 21, 2023, while a [companion Legal Sidebar](#) (Part 2) addresses decisions of the U.S. courts of appeals from that period.

Decisions of the Supreme Court

Last week, the Supreme Court issued opinions in six cases:

- **Communications:** The Court decided two cases from the Ninth Circuit involving social media companies’ possible civil liability under the [Anti-Terrorism Act](#) for conduct that allegedly aided terrorist groups. In the first case, the Court unanimously ruled that defendant social media companies could not be found liable for aiding and abetting terrorist groups under the Anti-Terrorism Act for “knowingly” providing “substantial assistance” to those groups through their use of the companies’ generally available services. In so ruling, the Court construed the Act’s civil liability standard against the backdrop of common law tort liability principles for aiding and abetting set forth in an

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LSB10968

earlier D.C. Circuit case (*Twitter, Inc. v. Taamneh*). For similar reasons, the Court, in a *per curiam* opinion, ruled that plaintiffs in the second case were unlikely to succeed in their Anti-Terrorism Act civil suit alleging that Google's YouTube platform assisted the Islamic State by promoting the organization's recruitment videos. The Court therefore declined to reach the question on which it had granted certiorari—whether [Section 230 of the Communications Act of 1934](#), as amended, rendered Google immune from suit (*Gonzalez v. Google LLC*).

- **Intellectual Property:** The Supreme Court unanimously held that certain patents held by Amgen, which claimed a class of antibodies used to treat high low-density lipoprotein cholesterol, did not satisfy the Patent Act's enablement requirement ([35 U.S.C. § 112](#)). That provision 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. The Court reasoned that Amgen had enabled the specific antibodies it discovered, but not the entire "genus" of antibodies claimed, because the specification contained no more than "research assignments" for generating the other antibodies in the class (*Amgen Inc. v. Sanofi*).
- **Intellectual Property:** In a 7-2 decision, the Supreme Court held that the Andy Warhol Foundation's commercial licensing of an artwork that Warhol made using a photograph of the musician Prince by the photographer Lynn Goldsmith was unlikely to fall under the "fair use" exception of the Copyright Act. The majority held that, because the original photograph by Goldsmith and the Foundation's commercial use shared substantially the same purpose and Warhol's use was not sufficiently transformative, the first fair use factor favored Goldsmith (*Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*).
- **Labor & Employment:** The Court, in a 7-2 ruling, held that a State National Guard is an executive agency under the [Federal Service Labor-Management Relations Statute](#) and is therefore subject to the Federal Labor Relations Authority's (FLRA's) jurisdiction when it hires and supervises "dual-status" technicians performing work in their federal civilian roles (*Ohio Adjutant Gen.'s Dep't v. FLRA*).
- **Tax:** The Supreme Court unanimously upheld a Sixth Circuit ruling that the petitioners—third parties associated with a delinquent taxpayer—were not entitled to notice of, or an opportunity to bring an action to quash, an Internal Revenue Service (IRS) summons for their bank account records. Although the IRS is generally required to provide notice when issuing a summons, [26 U.S.C. § 7609\(c\)\(2\)\(D\)\(i\)](#) waives notice if the IRS summons is "in aid of the collection of . . . an assessment made . . . against the person with respect to whose liability the summons is issued." The Court held this waiver of notice is not limited to circumstances where the delinquent taxpayer has a legal interest in the accounts or records sought (*Polselli v. IRS*).

In addition, the Court remanded back to the D.C. Circuit with instructions to dismiss as moot several states' request to intervene to defend the executive branch's now-terminated "[Title 42](#)" policy. Justice Jackson would have instead dismissed the writ of certiorari as improvidently granted (*Arizona v. Mayorkas*).

This past week, the Supreme Court also agreed to hear four more cases next term, with two consolidated for argument:

- **Criminal Law & Procedure:** In consolidated cases, the Court has been asked to resolve a circuit split over the interplay between the [Armed Career Criminal Act \(ACCA\)](#) and the [Controlled Substances Act \(CSA\)](#). The ACCA increases the mandatory minimum for federal criminal defendants who possess a firearm and have certain prior convictions,

- including state drug convictions defined with reference to the CSA. The circuits are split on whether sentencing courts must look to the CSA's controlled substances list in effect at the time of the defendant's prior state conviction or the list in effect at the time of the conviction for the federal firearm offense (*Brown v. United States*; *Jackson v. United States*).
- **Election Law:** The Court agreed to review a district court three-judge panel's decision that a district in South Carolina's congressional redistricting plan following the 2020 Census was an unconstitutional racial gerrymander (*Alexander v. South Carolina State Conf. of the NAACP*).
- **Separation of Powers:** In a case from the D.C. Circuit, the Supreme Court is asked whether individual Members of Congress satisfy constitutional standing requirements for bringing suit to compel the General Services Administration to provide information to the Members about the agency's implementation of a lease agreement with a company owned by then-President Donald Trump. The Members brought the lawsuit under 5 U.S.C. § 2954, which directs executive agencies to provide, upon request of any seven members of the House Oversight and Accountability Committee or any five members of the Senate Committee on Homeland Security & Governmental Affairs, information related to any matter in the respective Committee's jurisdiction (*Carnahan v. Maloney*).

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