



Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (August 7, 2023–August 11, 2023)

August 14, 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.

Decisions of the Supreme Court

No Supreme Court opinions were issued last week. The Supreme Court’s next term is scheduled to begin October 2, 2023.

The Court issued the following orders:

- **Bankruptcy:** The Supreme Court agreed to review whether the Bankruptcy Code authorizes a bankruptcy court to approve, as part of a plan of reorganization under Chapter 11 of the Bankruptcy Code, a release that includes nonconsensual, third-party releases of claims against nondebtors. In the case before the Court, Purdue Pharma filed for bankruptcy after costly civil litigation over its introduction of the opioid OxyContin into the pharmaceutical market. The bankruptcy court authorized the release of many civil litigation claims against the Sackler family, which owned and operated Purdue Pharma for decades, contingent upon the family agreeing to contribute billions to the company’s bankruptcy estate to fund settlements with private litigants and various levels of government. The Second Circuit, joining the majority of a widely acknowledged

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circuit split, [affirmed](#) the use of these releases. The Supreme Court stayed the Second Circuit's ruling, preventing Purdue Pharma's reorganization plan from moving forward until the Supreme Court has addressed the case ([Harrington v. Purdue Pharma, L.P.](#)).

- **Firearms:** The Supreme Court, in a 5-4 vote, stayed a district court's vacatur of a rule issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), which addresses "ghost guns" by requiring serial numbers on certain disassembled parts of firearms. Ghost guns—so-called because they lack serial numbers useful for tracing purposes—may include firearms that are assembled from components kits. Some of these kits were not previously required to have serial numbers because no individual included part met the prior definition of a firearm "frame or receiver" under agency regulations. The new ATF rule, entitled "Definition of 'Frame or Receiver' and Identification of Firearms," amends the definition to cover these kits, among other things. Firearms groups challenged two provisions of the rule in court, and a district court judge vacated the rule in its entirety, finding that ATF acted beyond its statutory authority in regulating the disassembled constituent parts of firearms. The Fifth Circuit had left that vacatur of the two challenged provisions in place while the government appealed the decision (although it stayed vacatur of other nonchallenged provisions). The Supreme Court's order stays the vacatur of the ghost-gun rule in its entirety, allowing it to go into effect pending the disposition of the appeal to the Fifth Circuit and the disposition of any future petition for certiorari ([Garland v. Vanderstok](#)).

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.

- ***Civil Procedure:** The Seventh Circuit held that district courts may construe new allegations raised in a party's brief, here a response to a motion for summary judgment, as a constructive motion to amend. The court widened a circuit split on the authority of district courts to infer a motion to amend a complaint. The court found no blanket prohibition in the Federal Rules of Civil Procedure, and it further stated that district courts are in the best position to rule on whether such a constructive motion satisfies the standard for obtaining leave to amend ([Schmees v. HCl.com, Inc.](#)).
- **Civil Rights:** A divided Fourth Circuit, sitting en banc, held that under the [Civil Rights Attorney's Fees Awards Act of 1976](#), winning a preliminary injunction may confer "prevailing party" status for attorney's fees purposes even if the party does not secure a final judgment. The court held that a preliminary injunction constitutes actual relief on the merits and may support an award of attorney's fees if it (a) provides some of the benefit the plaintiff sought in a way that materially alters the relationship between the parties, rather than merely maintaining the status quo between them; and (b) becomes moot, and thus irreversible, before a final judgment ([Stinnie v. Holcomb](#)).
- **Communications:** The Ninth Circuit affirmed the dismissal of a cause of action under the [Telephone Consumer Protection Act of 1991 \(TCPA\)](#) based on three mass-marketing text messages. The plaintiff contended that the text messages contained a "prerecorded voice" within the meaning of the TCPA. The court held that text messages did not use pre-recorded voices because they did not include audible components. The court reasoned that Congress intended to use the word "voice" to include only audible sounds, based on the statutory context of the TCPA and the ordinary meaning of the word "voice" ([Trim v. Reward Zone USA, LLC](#)).

- ***Criminal Law & Procedure:** The Third Circuit upheld a defendant’s conviction for wire fraud and conspiracy to commit wire fraud. The court rejected the defendant’s argument that the federal wire fraud statute, [18 U.S.C. § 1343](#), requires a scheme to personally obtain property, agreeing instead with the Second Circuit that a scheme to obtain property for a third party suffices for purposes of the statute. Acknowledging a break with the Ninth Circuit, the court also joined six other circuits in rejecting the argument that the federal wire fraud statute requires “convergence,” that is, a requirement that the party deceived by the defendant must also be the party defrauded of property (*United States v. Porat*).
 - **Environmental Law:** The Fourth Circuit rejected a private organization’s claim that certain shrimp trawlers’ return of unwanted marine organisms caught in shrimp nets (bycatch) to North Carolina’s state waters and the stirring up of sediment in those waters violated the Clean Water Act’s (CWA’s) prohibition against “discharge of any pollutant” without permits. Acknowledging a possible disagreement with the Sixth Circuit, the court, relying on the major questions doctrine, reasoned that it could only recognize a right to regulate bycatch under the CWA if clear authorization from Congress supported that authority, and the court found no such authorization. The court explained that, absent such authority, alternative interpretations that the CWA regulates bycatch would upset a separate regulatory scheme set up by Congress in the [Magnuson-Stevens Act of 1976](#), and would affect a large portion of the nation’s economy. The court also held that the shrimp trawlers did not violate the CWA by disturbing sediment with their nets because the sediment was not “dredged spoil,” defined as a pollutant in the CWA. According to the court, “dredged spoil” must be the result of excavation or other land-altering activity, rather than mere incidental disturbance by a shrimp net (*North Carolina Coastal Fisheries Reform Group v. Capt. Gaston LLC*).
 - **Environmental Law:** The Fourth Circuit dismissed petitions challenging federal agency actions that will enable the final construction and initial operation of the Mountain Valley Pipeline. The court dismissal was based on the enactment of [Section 324 of the Fiscal Responsibility Act of 2023](#), which ratified and approved the agencies’ action regarding the Mountain Valley Pipeline and removed the court’s jurisdiction over the petitions. The Act provided for a specific jurisdiction exception, allowing the U.S. Court of Appeals for the District of Columbia Circuit original and exclusive jurisdiction over the validity of Section 324. Prior to the enactment of the Act, all federal appellate courts exercised original and exclusive jurisdiction under the [Natural Gas Act](#), and the court held that this general grant of jurisdiction over challenges to future pipelines, include future challenges to operations of the Mountain Valley Pipeline not covered by Section 324, remains in place (*Appalachian Voices v. U.S. Dep’t of Interior*).
 - **Environmental Law:** The D.C. Circuit dismissed a petition filed by five states (Arizona, Louisiana, Ohio, Oklahoma, and Texas) challenging the Environmental Protection Agency’s [decision](#) to extend the deadline for compliance with a revised national drinking water regulation (which extended the deadline for states to enforce conforming revisions to their own regulations), holding that the states lacked [Article III standing](#). The court reasoned, among other things, that the states could not show that the extension caused them injury for standing purposes, as states had an option to abide by the original deadline and thus any injuries caused by delay were self-inflicted (*Arizona v. EPA*).
 - **Firearms:** The Fifth Circuit reversed a conviction under a federal statute, [18 U.S.C. § 922\(g\)\(3\)](#), barring individuals who unlawfully use a controlled substance from possessing a firearm. The court held that the statute violated the Second Amendment as
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applied to the defendant, an individual who admitted to smoking marijuana but was not shown to be intoxicated at the time of arrest (*United States v. Daniels*).

- **Foreign Sovereign Immunities Act (FSIA):** A divided D.C. Circuit panel ruled on two consolidated cases arising out of the Hungarian government’s confiscation of Jewish people’s property during the Holocaust and brought under the FSIA. The plaintiffs asserted jurisdiction under the FSIA’s expropriation exception, 28 U.S.C. § 1605(a)(3), which waives sovereign immunity for rights in property taken in violation of international law. The exception requires the property in question, or “any property exchanged for such property,” to be present in the United States. The court affirmed dismissal of one action where the plaintiffs claimed to be stateless at the time of the taking. The court reasoned that those plaintiffs failed to identify affirmative support for the premise that a state’s taking of a stateless person’s property amounts to a taking in violation of international law. The court also affirmed in part the denial of dismissal as to some claimants who asserted Czechoslovakian nationality. The court rejected the Hungarian government’s argument that a plaintiff must trace property in the United States to the property expropriated from them. The court held that FSIA plaintiffs do not have such a burden because the expropriation exception’s text provides for scenarios in which a foreign state exchanges or liquidates stolen property (*Simon v. Republic of Hungary*).
- **Immigration:** The Eleventh Circuit reversed a lower court decision revoking a defendant’s naturalization for failure to exhibit “good moral character” as required under the [Immigration and Nationality Act](#), after that defendant pled guilty to a criminal conspiracy under 18 U.S.C. § 1956(h) in a separate action. The court determined that to resolve the case, it was required to decide whether the crime to which the defendant pled guilty constituted a crime of moral turpitude. Following Supreme Court precedent, the court applied a categorical approach, examining not the defendant’s actual conduct but instead the least culpable conduct prohibited by the offense with which she was charged. The court determined that the two federal money laundering statutes that were the object of the defendant’s conspiracy, 18 U.S.C. § 1957 and 18 U.S.C. § 1956(a)(1)(B), did not constitute crimes of moral turpitude (*United States v. Lopez*).
- **Immigration:** The Seventh Circuit denied review of a Board of Immigration Appeals (BIA) decision declining to grant a removed lawful permanent resident’s motion seeking to reopen his proceedings. In 2019, Immigration and Customs Enforcement denied petitioner entry to the United States due to past state-law criminal convictions (which made him inadmissible under 8 U.S.C. § 1182) and subsequently removed him based on those convictions, even though he had been pardoned by the governor and the BIA had stayed proceedings pending resolution of the motion. While the statute governing removability, 8 U.S.C. § 1227, contains a waiver for those who have received a pardon, the statute governing inadmissibility, 8 U.S.C. § 1182, contains no pardon waiver. The petitioner, who contended that the governor’s pardon made him retroactively admissible in 2019, argued that the statutory distinction constituted improper differential treatment, in violation of the Constitution’s Equal Protection Clause. The court rejected petitioner’s argument, applying rational basis review and identifying several possible reasons for Congress’s treating these two scenarios differently, such as a desire to keep pardoned individuals in the country while their citizenship applications remained pending (*Wojciechowicz v. Garland*).
- ***Tax:** The D.C. Circuit widened a circuit split concerning whether a provision of the Affordable Care Act (ACA) constitutes a “tax” within the meaning of the Anti-Injunction Act, 26 U.S.C. § 7421(a). The ACA provision imposes an exaction on large employers for failing to provide health insurance coverage or providing noncomplying coverage, 26

U.S.C. § 4980H. The Anti-Injunction Act prohibits lawsuits to restrain the assessment or collection of a tax. The D.C. Circuit held that the § 4890H exaction is a tax under the Anti-Injunction Act, reasoning that Congress referred to the exaction as a tax multiple times within § 4980H. The court also held that Congress’s other references to the exaction in § 4890H as an “assessable payment” and “penalty” did not conflict with the term “tax” (*Optimal Wireless LLC v. IRS*).

- **Telecommunications:** The Seventh Circuit reversed a district court’s dismissal of a complaint that alleged the defendant, who sent messages to the plaintiff seeking to hire the plaintiff as a contractor, sent unsolicited advertisements by fax in violation of the [Telephone Consumer Protection Act](#) (TCPA). The court held that a fax is a prohibited “unsolicited advertisement” under the TCPA if an objective recipient would view it as urging the recipient to buy a good, service, or property, even if the fax also includes an explicit offer to purchase from the recipient or if the fax includes language denying that it is an advertisement or solicitation (*Smith v. First Hospital Laboratories, Inc.*).
- **Territories:** The First Circuit affirmed a district court’s order nullifying a Puerto Rico law for failure to comply with the requirements of the [Puerto Rico Oversight, Management, and Economic Stability Act](#) (PROMESA). PROMESA created the [Financial Oversight and Management Board of Puerto Rico](#) (Oversight Board) and requires the Governor of Puerto Rico to submit all newly enacted laws of Puerto Rico to the Oversight Board with certain budget estimates and certifications. Here, the district court blocked a new labor law’s implementation after determining that the Governor failed to submit the required documentation to the Oversight Board. The First Circuit rejected Puerto Rican officials’ arguments that claims to enforce the submission requirement should not have been decided by the judge overseeing Puerto Rico’s debt restructuring under Title III of PROMESA and that the Governor’s submissions to the Oversight Board were adequate (*Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Hernandez-Montanez*).
- **Terrorism:** The Ninth Circuit upheld a conviction of a Syrian national for participating in a conspiracy to use improvised explosive devices against U.S. military personnel and property in Iraq. The court held that [18 U.S.C. § 844\(f\)](#), which prohibits damaging or destroying federal property by means of fire or explosive, applies to conduct both within and outside the United States (*United States v. Alahmedalabdaloklah*).

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