



Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (September 18, 2023–September 24, 2023)

September 25, 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

The Supreme Court's next term is scheduled to begin October 2, 2023. The Court did not issue any opinions or grant certiorari in any cases last week. As discussed in [last week's Congressional Court Watcher](#), Justice Samuel Alito issued an administrative stay on September 14, 2023, giving the Supreme Court time to consider an emergency application in a closely watched case about social media platforms. Justice Alito's action temporarily removed the restrictions that a lower court had placed on certain executive branch officials whose actions might affect social media platforms' content-moderation decisions. This past week, Justice Alito extended the expiration date for the administrative stay from September 22 to September 27, 2023 (*Murthy v. Missouri*).

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.

Congressional Research Service

<https://crsreports.congress.gov>

LSB11046

- ***Civil Rights:** In a suit brought by the United States against the State of Mississippi, the Fifth Circuit reversed a lower court ruling that the state’s mental health care system violated [Title II of Americans with Disabilities Act \(ADA\)](#). The lower court held that the system placed adults with severe mental illness at risk of unjustified institutionalization in contravention of the ADA’s mandate—reflected in ADA [regulations](#) and [caselaw](#)—that persons with disabilities be placed in the most integrated setting possible. As a remedy, the lower court ordered the state to expand its community-based mental health services. The Fifth Circuit held that unspecified persons’ possible “risk” of unjustified institution does not give rise to a concrete harm under Title II of the ADA. In reaching this conclusion, the court split with other circuits that deferred to a Department of Justice [guidance document](#) that concluded a serious risk of institutionalization is enough to establish a claim. The Fifth Circuit also held that the lower court’s injunction was too broad and required far more than necessary for the state to comply with Title II (*United States v. Mississippi*).
- **Criminal Law & Procedure:** The Ninth Circuit held that neither [21 U.S.C. § 331\(a\)](#), which makes it a criminal offense to ship misbranded drugs in interstate commerce, nor [21 U.S.C. § 333\(a\)\(2\)](#), which makes a second conviction for the offense a felony, requires the government to prove that a defendant knowingly mislabeled the shipped drugs. The panel observed that the plain text of the statutes did not impose a scienter requirement, and concluded that the offense falls under a limited category of public welfare offenses for which Congress imposed a form of strict liability. The panel further held that, assuming the Fifth Amendment’s Due Process Clause sets an outer limit on Congress’s ability to define strict liability offenses, that limit was not crossed here, when the defendant’s felony conviction required a prior conviction for the same offense, putting him on notice of the regulatory regime under which he was operating (*United States v. Marschall*).
- **Criminal Law & Procedure:** The Tenth Circuit ruled that a criminal defendant’s convictions for possessing child pornography under [18 U.S.C. § 2252\(a\)\(4\)](#) violated the Fifth Amendment’s Double Jeopardy Clause. The circuit court held that the lower court erred by treating two jurisdictional hooks in the statute—possessing child pornography in a federal enclave or Indian country (under [§ 2252\(a\)\(4\)\(A\)](#)) and possessing child pornography that has been transported or produced in interstate commerce (under [§ 2252\(a\)\(4\)\(B\)](#))—as distinct offenses, rather than two ways by which the same offense could be committed. The circuit court remanded the case so the lower court could vacate one of the defendant’s convictions (*United States v. Jackson*).
- **Education:** The Eighth Circuit affirmed a district court’s dismissal of an expelled high school student’s claims under [Title IX of the Education Amendments of 1972](#) and its implementing regulations. Besides concluding that the student failed to plausibly assert a claim that the school discriminated against him on the basis of sex, the court held that the plaintiff could not sue the school over its alleged failure to adopt grievance procedures required under a Title IX-implementing regulation, [34 C.F.R. § 106.8](#). The court held that Congress had not afforded private parties an express or implied right of action to enforce this regulatory requirement, but made enforcement the responsibility of the administering federal agencies (*Wells v. Creighton Preparatory Sch.*).
- **Environmental Law:** A divided Tenth Circuit panel partially vacated the Environmental Protection Agency’s (EPA’s) approval of Colorado’s revised state implementation plan (SIP) for attaining national ambient air quality standards for ozone in the Denver Metro-North Front Range area. The majority held the EPA acted inconsistently with [governing regulations](#) when approving aspects of the Colorado SIP that excluded emissions from temporary activities, such as

construction or exploration for natural resources, from being used to assess whether an entity was a “major” stationary source of air pollution and therefore subject to permit requirements (*Ctr. for Biological Diversity v. U.S. EPA*).

- **Property:** The Ninth Circuit ruled that the Alaska Railroad Corporation, a state-owned corporation operating Alaska’s railroad system, could deny homeowners in an Anchorage subdivision access to a portion of an airstrip next to the railroad. The court decided that when enacting the [1914 Alaska Railroad Act](#), which authorized of the Alaska Railroad, the federal government reserved a right-of-way over a corridor of land alongside the railroad track, and this right-of-way included an exclusive-use easement over covered land. The federal government later transferred most property rights over the railroad to the Alaska Railroad Corporation, and the court ruled the conveyed rights enabled the corporation to deny homeowners access to portions of the airstrip that overlapped with the railroad’s right-of-way (*Alaska R.R. Corp. v. Flying Crown Subdivision Addition No. 1 & Addition No. 2 Prop. Owners Ass'n*).

Author Information

Michael John Garcia
Deputy Assistant Director/ALD

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.