

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (October 16, 2023–October 22, 2023)

October 23, 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

Last week, the Supreme Court took action on two emergency applications, and granted certiorari to review one of those cases:

- **Firearms:** The Supreme Court granted the federal government’s application to vacate a district court’s injunction blocking enforcement of a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) rule addressing “ghost guns,” so-called because they lack serial numbers useful for tracing purposes. According to the federal government, the ATF rule requires certain manufacturers and sellers of specific products that can readily be converted into functional firearms or their key components to, among other things, mark their products with serial numbers. As discussed in a [prior Congressional Court Watcher](#), the Court previously stayed the same district court’s vacatur of the ATF rule on an emergency basis, allowing the rule to go into effect while litigation challenging it proceeds (*Garland v. Blackhawk Mfg. Grp., Inc.*).

Congressional Research Service

<https://crsreports.congress.gov>

LSB11060

- **Speech:** The Supreme Court granted the Biden Administration’s request to temporarily block a district court’s order that, [as modified by the Fifth Circuit](#), limited officials in the White House, the Surgeon General’s Office, the Centers for Disease Control and Prevention, and the Federal Bureau of Investigation from communicating with social media platforms regarding their content-moderation decisions. Three justices would have denied the stay request. The Court also granted certiorari on the questions presented in the [application for stay](#) (*Murthy v. Missouri*).

Decisions of the U.S. Courts of Appeal

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 Rights:** Deepening a circuit split, a divided Second Circuit held that establishing a “factor other than sex” defense to a disparate pay claim under the [Equal Pay Act](#) requires proving only that the pay disparity resulted from a differential based on any factor other than sex. The controlling opinion rejected the argument that a defendant must also prove that the differential is job related. (*Eisenhauer v. Culinary Institute of America*).
- **Criminal Law & Procedure:** The Ninth Circuit held that “voluntary manslaughter” under [18 U.S.C. § 1112\(a\)](#)—defined as “the unlawful killing of a human being without malice” that occurs “[u]pon a sudden quarrel or heat of passion”—qualifies as a “crime of violence” for purposes of [18 U.S.C. § 924\(c\)](#), which enhances the sentence of a person who uses or possesses a firearm during a crime of violence. The court, applying the categorical approach, reasoned that voluntary manslaughter, though lacking the element of malice, otherwise required the same mental state as murder to qualify as a crime of violence (*United States v. Draper*).
- **Energy:** A divided Ninth Circuit held that [Section 4\(h\)\(11\)\(A\)](#) of the Northwest Power Act does not require the [Bonneville Power Administration](#), a federal agency tasked with selling power in the Pacific Northwest, to take into account measures to protect fish and wildlife when establishing rates for the electricity it sells (the dissenting panelist concluded that the panel lacked subject matter jurisdiction over the petition because the petitioners did not demonstrate that they had Article III standing) (*Idaho Conservation League v. Bonneville Power Administration*).
-
- **Food & Drug:** A divided Third Circuit denied an e-cigarette manufacturer’s petition to review a Food and Drug Administration (FDA) order prohibiting the petitioner from marketing its menthol-flavored e-cigarettes. The court concluded that FDA did not change its relevant evidentiary standard while evaluating the petitioner’s application, adopt a “blanket anti-menthol policy,” or otherwise act arbitrarily or capriciously under the Administrative Procedure Act. The court, rejecting the dissent’s reliance on a Fifth Circuit stay of another FDA order, concluded that FDA’s internal debates about menthol-flavored e-cigarettes reflected a non-final, evolving understanding of scientific evidence and the sort of ongoing deliberation that is a “hallmark of reasoned agency decision-making” (*Logic Technology Development LLC v. FDA*).
- **Health:** In an apparent matter of first impression among circuit courts, the Second Circuit held that Medicaid and Medicare reimbursements to a nursing home did not qualify as benefits “for the use and benefit of another” under a statute criminalizing the conversion of federal health program benefits ([42 U.S.C. § 1320a-7b\(a\)\(4\)](#)). As part of a [False](#)

Claims Act suit, an employee of a health system alleged that the health system wrongfully diverted Medicare and Medicaid reimbursements received by its nursing homes in violation of Section 1320a-7b(a)(4). The court concluded that this statute does not apply to payments that reimburse recipients for prior services rendered and that do not contain any conditions attached as to how the recipient uses the payments in the future (*United States ex rel. Quartararo v. Cath. Health Sys. of Long Island Inc.*).

- **Indian Law:** The Ninth Circuit held that the 1868 Treaty of Fort Bridger between the United States and several bands of the Shoshone and Bannock Tribes does not make the Tribes' treaty-reserved hunting rights contingent on the Tribes permanently relocating to designated reservations. Idaho officials had argued that the Treaty conditioned hunting rights on the Tribes relocating to designated reservations, and that members of the Shoshone's Northwestern Band could not exercise the hunting rights because the Northwestern Band does not reside on a designated reservation (*Northwestern Band of the Shoshone Nation v. Wooten*).
- **Intellectual Property:** A divided Federal Circuit held that the Trademark Trial and Appeal Board lacked authority to cancel a trademark registration because an attorney submitted a false declaration as to its incontestability. **Section 15** of the Lanham Act provides that registered trademarks in continuous use for five consecutive years may become "incontestable," giving them additional legal protections. Although **Section 14** of the Lanham Act allows for cancellation of a trademark registration when the "registration was obtained fraudulently," the court held that this language does not authorize cancellation of a registration when fraud is used to obtain incontestability status, reasoning that "registration and incontestability are different rights" (*Great Concepts, LLC v. Chutter, Inc.*).
- **Maritime Law:** The Fifth Circuit held that a one-to-one ratio of punitive damages to compensatory damages that the Supreme Court applied as a damages cap in *Exxon Shipping Co. v. Baker* does not apply in all maritime cases. The court concluded that punitive damage awards may exceed that ratio in maritime cases depending on the particular circumstances of the case (*Kenai Ironclad Corp. v. CP Marine Servs., LLC*).
- **Securities:** The Fifth Circuit upheld the Securities and Exchange Commission's (SEC) approval of a Nasdaq stock exchange rule requiring listed companies to disclose information related to the diversity of their boards of directors. Against constitutional challenges, the court held that Nasdaq, as a "self-regulatory organization," is not a state actor subject to constitutional constraints, and the rule at issue, although **approved by the SEC**, is not attributable to the government and therefore not subject to constitutional scrutiny. Against statutory challenges, the court held that the SEC approval was within its statutory authority under the **Securities Exchange Act of 1934**, and that approval of the rule was not arbitrary and capricious under the Administrative Procedure Act (*Alliance for Fair Board Recruitment v. SEC*).

Author Information

Bryan L. Adkins
Legislative Attorney

Peter J. Benson
Legislative Attorney

Jimmy Balser
Legislative Attorney

Justin C. Chung
Legislative Attorney

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.