

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (November 6–November 12, 2023)

November 13, 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 did not issue any opinions or agree to review any new cases last week.

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.

- **Consumer Protection:** The Eleventh Circuit joined other circuits in holding that a consumer may recover statutory damages of not less than \$100 and not more than \$1,000 for willful violations of requirements imposed by the Fair Credit Reporting Act under [15 U.S.C. § 1681n\(a\)\(1\)\(A\)](#), without showing any actual damages, such as the denial of credit. (*Santos v. Healthcare Revenue Rec. Grp.*).

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- ***Criminal Law & Procedure:** The Sixth Circuit held that an “[intervening arrest](#)” under the [Sentencing Guidelines](#) means a custodial arrest that is part of a criminal investigation, and does not include a traffic stop in which a defendant is issued a citation. Under the Sentencing Guidelines, when a defendant is sentenced on the same day for multiple offenses, they are counted as separate convictions to determine whether a recidivist penalty applies if the offenses were separated by an “intervening arrest.” This decision aligned with the Third, Ninth, and Eleventh Circuits in a circuit split on the issue with the Seventh Circuit. (*United States v. Rogers*).
- **Criminal Law & Procedure:** In a per curiam opinion, the Sixth Circuit rejected two criminal defendants’ constitutional challenges to their convictions under [18 U.S.C. § 1958\(a\)](#) for the use of an interstate commerce facility in a murder-for-hire scheme. The defendants claimed that Congress’s power to regulate interstate commerce did not reach their conduct, as they never left the state of Michigan and the cell phone calls made to facilitate the murder were intrastate. The circuit court held that the statute’s application to the defendants was permissible. It observed that the Supreme Court had recognized that Congress’s [Commerce Clause](#) power extends to the regulation of the instrumentalities of interstate commerce, even when those instrumentalities are used for intrastate activities. The circuit court held that cell phones were an instrumentality of interstate commerce, and that Congress could therefore reach the defendants’ conduct (*United States v. Allen*).
- **Education:** In a case involving a teacher’s sexual abuse of a student, the Tenth Circuit held that the district court erred when it granted the school district’s motion for summary judgment on the student’s [Title IX](#) claims. The court determined that the evidence raised a question of fact about whether the school district had actual notice of the substantial risk of abuse posed by the teacher. The court of appeals recognized that district courts are divided as to whether the student needed to provide actual notice of harassment against her to trigger liability under Title IX, or could rely on notice of prior complaints in general. The panel assumed prior complaints alone were sufficient without deciding the issue because the school district did not argue categorically against such a construction. (*Forth v. Laramie Cnty. Sch. Dist. No. 1*).
- ***Election Law:** The Fifth Circuit, in a per curiam opinion, affirmed a district court’s decision that a Texas redistricting plan for county commission elections diluted the voting power of Black and Hispanic voters in violation of [Section 2 of the Voting Rights Act \(VRA\)](#). While neither the Black nor Hispanic population in the county was large enough to be individually protected under Section 2, the circuit panel followed binding Fifth Circuit precedent holding that distinct minority groups should be aggregated for purposes of vote-dilution claims. The circuit panel, however, expressed disagreement with this precedent, observing that a circuit split had emerged on this point and requested that the full court consider rehearing the case en banc so it could reconsider its precedent permitting aggregations (*Petteway v. Galveston Cnty.*).
- **Election Law:** The Fifth Circuit affirmed a district court’s ruling that Louisiana’s 2022 congressional redistricting map impermissibly dilutes the votes of Black Louisianans in violation of the [VRA](#). In 2022, the district court issued a preliminary injunction directing the state legislature to enact a new redistricting plan that included an additional majority-Black congressional district to satisfy the VRA’s prohibition against vote dilution, but the Supreme Court stayed the injunction pending its consideration of a similar challenge to an Alabama redistricting map in *Allen v. Milligan*, which the Court later held to violate the VRA. Applying *Allen* to the case before it, the Fifth Circuit found no clear error in the lower court’s determination that the Louisiana redistricting plan violated the VRA. While deciding that the 2022 elections rendered the original district court injunction moot, the

Fifth Circuit allowed the Louisiana state legislature until January 15, 2024, to pass a new redistricting plan (*Robinson v. Ardoin*).

- **Firearms:** The Fifth Circuit affirmed a district court’s decision that the Bureau of Alcohol, Tobacco, Firearms and Explosives lacked statutory authority to promulgate a rule requiring serial numbers on certain disassembled parts of firearms. The rule is largely aimed at “ghost guns” that lack serial numbers useful for tracing purposes, and may include firearms that are assembled from components kits. The district court had vacated the final rule, but before the Fifth Circuit’s ruling here, the Supreme Court stayed the vacatur during the pendency of the litigation. The circuit court remanded the case for the district court to determine whether a vacatur of the entire rule was the appropriate remedy. Recaps of earlier decisions in the case are found in [prior editions](#) of the *Congressional Court Watcher* (*VanDerStock v. Garland*).
- **Labor & Employment:** The First Circuit held that a Catholic school teacher, who could not return to work due to complications from surgery and who was terminated after exhausting her leave under the Family and Medical Leave Act (FMLA), failed to show discrimination under [Title I of the Americans with Disabilities Act \(ADA\)](#). Under the ADA, a “qualified individual” can perform all essential functions of a job with a “reasonable accommodation.” The court found in-person attendance was an essential function of the job. Thus, she was not a “qualified individual” under the ADA, and allowing her an additional three to six months’ absence after exhausting her leave under the FMLA was not a “reasonable accommodation” (*Sarkisian v. Austin Preparatory Sch.*).
- **Religion:** A divided Sixth Circuit held that parents who wanted to use their state education savings program funds to pay for their children’s private religious school tuition failed to show that a 1970 provision of Michigan’s constitution, barring the use of public funds for private schools, violated their equal protection rights under the [political process doctrine](#). The majority found that the provision was facially neutral as it prohibited the funding of all private schools—religious and secular—and although the majority of private schools at the time of enactment were Catholic, that did not alter the analysis. The majority also held that because Michigan voters reaffirmed the provision in 2000 by rejecting a private-school voucher proposal, they purged any taint of antireligious animus in the original enactment (*Hile v. Michigan*).
- **Securities:** The Seventh Circuit affirmed the dismissal of shareholders’ claims alleging that a proxy statement disclosing the terms of a merger contained materially misleading statements and omissions. The panel held that [Section 14\(a\)](#) of the Securities Exchange Act of 1934 did not require the proxy statements to disclose or discuss alleged alternative merger structures preferred by the plaintiffs. The panel also held that the directors’ statements that the transaction was “fair” and in the “best interests” of shareholders were not actionable, as the proxy statement adequately disclosed the facts used to form the directors’ opinions and the scope of the inquiry they conducted, and management’s “true purpose” or motive for acting is not material under federal securities laws (*Smykla v. Molinaroli*).
- **Speech:** A divided Ninth Circuit held that the government violated the [First Amendment](#) rights of agricultural producers and businesses selling a product containing a chemical found in Roundup by requiring that they put a warning on their products that the chemical was a known carcinogen. The court of appeals rejected the government’s argument that a lower standard of review for compelled speech applied. Although the warning involved commercial speech, the panel found it did not require the disclosure of “purely factual and uncontroversial information,” given the scientific debate over

whether the chemical was a carcinogen. Instead, the court applied [intermediate scrutiny](#) and found the compelled commercial speech did not directly advance a substantial governmental interest. The panel found the disclosure requirement was more extensive than necessary because California could itself share information about the chemical without burdening plaintiffs with unwanted speech. (*Nat'l Ass'n of Wheat Growers v. Bonta*).

- **Torts:** The First Circuit held that U.S. Immigration and Customs Enforcement (ICE) officers were not shielded by sovereign immunity for allegedly mistreating a disabled person with an amputated leg while transporting him in immigration custody because the “discretionary function” exception under the Federal Torts Claims Act (FTCA) did not categorically apply. The court held that the plaintiff had raised a factual dispute as to whether the Rehabilitation Act, as well as a Department of Homeland Security implementing regulation, [6 C.F.R. § 15.30\(a\)](#), and accompanying ICE policy statements, imposed a nondiscretionary duty on ICE officers not to discriminate against individuals with disabilities. The First Circuit reversed the lower court’s entry of summary judgment for the United States and remanded (*Thiersaint v. Dep’t of Homeland Sec.*).
- **Torts:** In affirming the dismissal of consolidated suits brought under the FTCA, the Sixth Circuit considered procedural requirements for filing an FTCA claim. The family and the estate of a person killed during an encounter with federal law enforcement filed separate suits under the FTCA, but both were procedurally defective. The Sixth Circuit found the estate’s claim problematic because the estate had initially failed to exhaust its administrative remedies, as [required](#) under the FTCA, before filing suit. Although the estate later amended the complaint after exhausting its administrative remedies, the Sixth Circuit held that the estate could not cure the defect of its prematurely filed original filed complaint by amending it. Instead, the court determined the estate should have dismissed the original claim and filed a new action. By contrast, the court found the family’s suit defective because its administrative claim was filed too late, after the FTCA’s [two-year statute of limitations](#) (*Kellom v. Quinn*).

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