

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (March 25–March 31, 2024)

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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.

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Decisions of the Supreme Court

The Supreme Court did not issue any opinions or agree to hear any new cases last week.

Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) indicate cases where 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.

- **Criminal Law & Procedure:** In a revised opinion, the Third Circuit concluded that the defendant’s armed robbery convictions under [18 U.S.C. § 2113\(d\)](#) made him subject to enhanced penalties under [18 U.S.C. § 924\(c\)](#) for carrying a firearm during the commission of a “crime of violence.” The defendant argued that his robbery convictions could not constitute crimes of violence because Section 2113(d) can cover reckless conduct, and caselaw recognizes that reckless acts do not meet the “crime of violence”

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definition. The circuit panel held that Section 2113(d) is divisible into different crimes and that the particular offenses for which the defendant was convicted constituted crimes of violence because they required purpose or knowledge. More broadly, the circuit court held that whenever a federal offense is predicated on the commission of another crime (as is the case under Section 2113(d)), the elements of the predicate crime also count as elements of the first offense (*United States v. Jordan*).

- **Education:** The Fourth Circuit held that a religiously affiliated private school's tax-exempt status under 26 U.S.C. § 501(c)(3) did not make the school subject to Title IX of the Education Amendments of 1972. The circuit panel ruled that Title IX's application to entities "receiving Federal financial assistance" required those entities to receive affirmative forms of financial aid from the federal government through the direct or indirect transfer of funds. The panel decided that the withholding of a tax burden to Section 501(c)(3) entities did not constitute an affirmative grant of funds satisfying this requirement. The panel also decided that those entities' receipt of tax-deductible charitable contributions did not equate to "receiving Federal financial assistance" (*Buettner-Hartsoe v. Baltimore Lutheran High Sch. Ass'n*).
- **Education:** In a revised opinion, a divided Fifth Circuit panel considered the interplay between the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). The panel held that a district court erred in dismissing a student's stand-alone ADA suit against a school when the "gravamen" of the complaint involved a denial of a right to a free appropriate public education guaranteed by the IDEA. The circuit majority held that plaintiffs who have properly exhausted their IDEA remedies, or who seek relief unavailable under the IDEA (e.g., compensatory damages), may file suit under the ADA asserting claims related to the denial of appropriate educational services (*Lartigue v. Northside Indep. Sch. Dist.*).
- **Election Law:** A divided Third Circuit panel held that a Pennsylvania requirement that mail-in and absentee voters sign and date a declaration on the return envelope containing their mail ballot, or else have their undated or misdated ballots set aside, did not violate the Civil Rights Act's Materiality Provision. That provision generally bars officials from limiting a person's right to vote because of an error or omission that is immaterial to determining voting qualifications. The majority decided that the Materiality Provision applies only when a state is determining who is eligible to vote and not to rules governing how a qualified voter casts a ballot, regardless of the purpose those rules serve. The circuit court reversed the lower court decision and remanded the case to the district court to consider the plaintiffs' constitutional claims (*Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*).
- **Immigration:** A divided Fifth Circuit panel rejected Texas's motion to stay a preliminary injunction blocking enforcement of a state law, S.B. 4, which authorizes the state to arrest, criminally sanction, and remove aliens it believes to have crossed into the United States illegally. In reviewing the state's request for a stay, the appeals court considered whether Texas was likely to succeed in its argument that the district court had insufficient legal grounds to block the law from going into effect. The panel majority decided that there was strong support for the district court's conclusion that Congress intended the federal statutory framework governing the entry and removal of aliens to leave no room for supplementary state measures. The majority also held that Texas had not sufficiently demonstrated that S.B. 4 would not be an obstacle to objectives of federal immigration law. In particular, the majority ruled that Texas had not shown that the state statute did not subvert federal authorities' ability to determine when or whether to pursue criminal or removal proceedings against those who entered the United States without authorization.

- The majority also held that Texas had not shown that [Article I, Section 10](#), of the Constitution, which permits states to respond to an “invasion” without awaiting federal action, applied or permitted the state to regulate matters preempted by federal immigration law (*United States v. Texas*).
- ***Labor & Employment:** The Federal Circuit held that the [Equal Pay Act \(EPA\)](#) applies to the federal government as it does to other employers, and it widened a circuit split over when prior pay may justify salary differentials among male and female employees. The EPA generally bars discrimination in compensation between similarly situated employees of the opposite sex, subject to exceptions that include when the difference is because of a “factor other than sex.” The Fourth and Seventh Circuits have held that prior pay is a “factor other than sex” that, standing alone, can justify differential treatment, while the Ninth Circuit has decided that prior pay can never justify differential pay. The Sixth, Tenth, and Eleventh Circuits have taken a middle approach, under which an employer may consider prior pay only if a pay disparity is based on at least one other permissible factor. The Federal Circuit largely endorsed the middle approach, although it would also allow employers to use prior pay alone if they can show that employee’s prior pay level was not based on sex discrimination (*Boyer v. United States*).
- **Labor & Employment:** The Second Circuit clarified its application of the *McDonnell Douglas* test, which is used to determine if a [Title VII](#) employment discrimination case can survive a motion for [summary judgment](#) when the employee lacks direct evidence of discrimination. Under *McDonnell Douglas*’s third step, after an employer proffers a facially nondiscriminatory reason for an employee’s disparate treatment, the employee must show that this justification was pretextual. The circuit court held that an employee need not show that the employer’s stated justification was entirely pretextual; instead, the employee can satisfy the third step by producing evidence that discrimination was at least one motivating factor for the employer’s action (*Bart v. Golub Corp.*).

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