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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (April 15–April 21, 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.

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 issued opinions in four cases:

- **Civil Rights:** The Court unanimously ruled that the lower courts had applied the wrong standard when deciding a case involving a police officer who argued that her transfer to another department component was unlawful employment discrimination and retaliation under Title VII of the Civil Rights Act of 1964. The controlling opinion, joined by six Justices, held that Title VII bars discrimination in transfer decisions without need for a separate court determination that the decision caused a "significant" harm to the transferee (*Muldrow v. City of St. Louis*).
- **Criminal Law & Procedure:** The Court unanimously held that a federal district court judge's failure to adhere to the requirements for entering a preliminary criminal forfeiture order under Federal Rule of Criminal Procedure 32.2 does not automatically prevent the issuance of an order at sentencing and instead is subject to harmless-error principles on appellate review (*McIntosh v. United States*).

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- **Property:** In a 9-0 ruling, the Court held that a Texas law provided plaintiffs with a cause of action to bring suit seeking just compensation from the state for an alleged violation of the Takings Clause of the Constitution, and therefore the Court declined to reach the question for which certiorari had initially been granted: whether federal courts may entertain claims for just compensation against a state under the Takings Clause directly or whether an authorizing statute is required to bring suit (*DeVillier v. Texas*).
- **Veterans:** In a 7-2 decision, the Court held that a veteran with distinct periods of qualifying service for education benefits under the Post-9/11 GI Bill and the earlier Montgomery GI Bill was separately entitled to benefits under each. The Court further held that the veteran could use his benefits under each statute, in any order, up to the 48-month aggregate-benefits cap found in 38 U.S.C. § 3695 (*Rudisill v. McDonough*).

The Supreme Court also took action on an emergency application:

- **Health:** Over the opposition of three Justices, the Court partially stayed a preliminary injunction in a case challenging the constitutionality of an Idaho criminal statute that bars health care professionals from providing certain medical treatments to transgender minors. Because of the stay, Idaho may generally enforce the law except as to the plaintiffs in the case during the pendency of the litigation (*Labrador v. Poe*).

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.

- **Bankruptcy:** The Fourth Circuit held that property owned by a debtor and his spouse as a tenancy by the entirety was not exempted from the debtor's bankruptcy estate under 11 U.S.C. § 522(b)(3)(B) to the extent of the debtor's outstanding tax debt to the Internal Revenue Service (IRS). Section 522(b)(3) exempts from the bankruptcy estate "interest as a tenant by the entirety" to the extent that it is "exempt from process under applicable nonbankruptcy law." The circuit panel held that because a federal tax lien can attach to one spouse's interest in an entireties property even when the other spouse is not also liable for the tax debt, the property is not exempted under Section 522(b)(3)(B) so long as the IRS has the right to obtain the lien, even if the lien has not yet been perfected against the property (*Morgan v. Bruton*).
- **Bankruptcy:** Agreeing with the Fourth Circuit, a Fifth Circuit panel held that Section 523(a) of the Bankruptcy Code—which limits certain debts from being discharged in certain bankruptcy proceedings—applies by way of 11 U.S.C. § 1192 to all small business debtors who undergo Chapter 11, Subchapter V's streamlined reorganization process, including both individuals and corporate entities (*Matter of GFS Indus., L.L.C.*).
- **Civil Rights:** A divided Fourth Circuit panel held that a West Virginia law, which prohibits persons whose biological sex was determined at birth to be male from participating on female sports teams, violated Title IX of the Education Amendments of 1972 as applied to a transgender youth who was taking puberty blocking medication and publicly identified as a girl, and who sought to participate in her school's cross country and track teams for girls. Reversing the lower court, the panel majority held that the state law violated Title IX's prohibition on discrimination "on the basis of sex" in educational programs or activities receiving federal financial assistance, because the law (1) discriminates on the basis of gender identity, which the Fourth Circuit previously recognized as sex-based discrimination barred by Title IX; and (2) discriminates on the

basis of sex assigned at birth by barring transgender girls but not transgender boys from participating in teams consistent with their gender identity. The panel majority also held that the lower court erred in dismissing the plaintiff's claim that the law violated the Equal Protection Clause as applied to her. In so doing, the majority held that facial classifications based on gender identity trigger intermediate scrutiny and remanded so the lower court could consider whether there was a satisfactory justification for denying the plaintiff participation on the girls' sports teams. Finally, the court majority observed that its analysis was limited to the plaintiff's challenge to the law as applied to her, and that it did not hold that schools were always required to allow transgender girls to play on girls' teams even when they had gone through puberty and had elevated levels of circulating testosterone (*B.P.J. v. W. Va. State Bd. of Educ.*).

- **Criminal Law & Procedure:** The Fourth Circuit upheld the convictions of seven criminal defendants for various gang-related activities, including for attempted murder and for the use of a firearm while committing a "crime of violence" under 18 U.S.C. § 924(c). In so doing, the court held that an attempted offense constitutes a crime of violence when the completed offense invariably requires the use of force and a mens rea more culpable than recklessness. Applying this standard, the court decided that the defendants' attempted murder convictions constituted crimes of violence subject to sentence enhancements under Section 924(c) (*United States v. Hunt*).
- **Food & Drug:** The Federal Circuit reversed a lower court's decision that a child was not entitled to compensation under the National Childhood Vaccine Injury Act due to vaccine-related injury, after deciding that the lower court applied an inappropriately narrow definition of "surgical intervention" under 42 U.S.C. § 300aa-11(c)(1)(D)(iii) when determining whether the injury constituted recoverable harm. The circuit panel disagreed with the lower court that the "surgical intervention" must be used to directly treat or change the course of a vaccine-related injury; instead, the panel held that the term includes surgical acts that may be either diagnostic or therapeutic when done to prevent harm or improve the health of the patient (*Leming v. Sec'y of Health & Hum. Servs.*).
- **Firearms:** The Eighth Circuit rejected a Second Amendment challenge to 18 U.S.C. § 922(g)(3), which makes it a criminal offense for a person to possess a firearm while unlawfully using or addicted to a controlled substance. Applying the framework established by the Supreme Court in *New York State Rifle & Pistol Association v. Bruen*, the panel majority assumed that drug users were among the "people" protected by the Second Amendment. The majority also decided that the current prohibition on firearm possession by drug users was not closely comparable to firearm restrictions on intoxicated persons in place at the time of the Second Amendment's ratification. Still, the majority concluded that Section 922(g)(3) was analogous to historical restrictions on firearm possession by mentally ill persons and those brandishing firearms in a manner likely to terrify others, and the majority therefore decided the statute did not facially violate the Second Amendment. The court left unresolved, however, whether certain applications of Section 922(g)(3) might not satisfy the *Bruen* test (*United States v. Veasley*).
- ***Labor & Employment:** In a per curiam opinion, a Sixth Circuit panel upheld the Social Security Administration's denial of disability insurance benefits and supplemental security income where the petitioner was found to have transferrable skills that would enable her to find work in two other occupational fields despite her physical impairments. Governing regulations provide that a person of "advanced age" at the alleged onset of a disability are to be treated as disabled unless an administrative law judge finds that her skills are "readily transferable to a significant range of semi-skilled or skilled work that is

within [her] functional capacity." The circuit panel disagreed with the Ninth Circuit's interpretation of a "significant range of ... work" as requiring a finding that the applicant could find employment in at least three different occupational fields. Instead, the panel understood this phrase to mean that the applicant could undertake a substantial number of other jobs, even if those jobs were in two or fewer occupational fields (*Hamilton v. Comm'r of Soc. Security*).

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