

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (April 29–May 5, 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 granted certiorari in four cases:

- **Civil Liability:** The Court granted certiorari in a case from the Second Circuit on whether a trucker who consumed a hemp-derived product marketed as free from tetrahydrocannabinol (THC), then lost his job following a positive drug test, could sue the product marketer for damages, including lost wages, under the [Racketeer Influenced and Corrupt Organizations Act \(RICO\)](#), which creates a civil treble-damages action for those injured in their “business or property by reason of” certain offenses (*Med. Marijuana, Inc. v. Horn*).
- **Civil Procedure:** The Court agreed to hear a case from the Eighth Circuit to consider whether, following a defendant’s removal of a case from state to federal court, a plaintiff’s post-removal amendment of the complaint to omit the federal questions eliminates federal subject-matter jurisdiction under [28 U.S.C. § 1331](#) and supplemental

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jurisdiction over the plaintiff's remaining state-law claims under 28 U.S.C. § 1367 (*Royal Canin U.S.A., Inc. v. Wulfschleger*).

- **Immigration:** The Court agreed to hear a case from the Eleventh Circuit on whether 8 U.S.C. § 1252's bar on judicial review of certain discretionary immigration decisions applies to a decision to revoke approval of a visa petition under 8 U.S.C. § 1155 (*Bouarfa v. Mayorkas*).
- **Veterans:** The Court granted certiorari in a case from the Federal Circuit on how the U.S. Court of Appeals for Veterans Claims (CAVC) should review whether the Department of Veterans Affairs (VA) properly applied the "benefit of the doubt" rule to benefits claims under 38 U.S.C. § 5107(b). The petitioners argue that 38 U.S.C. § 7261(b), which requires the CAVC to "take due account" of VA's application of the rule, requires the court to employ something other than its ordinary "clear error" standard of review (*Bufkin v. McDonough*).

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 Seventh Circuit joined the Ninth and Tenth Circuits in holding that a Chapter 13 trustee must return his or her fee if the debtor's repayment plan is not confirmed by the bankruptcy court. Among other things, the panel reasoned that if Congress intended Chapter 13 trustees to deduct their fee before confirmation, Congress would have expressly said so, as it had done for trustees under other Bankruptcy Code chapters (*Marshall v. Johnson*).
- **Civil Liability:** The Fourth Circuit affirmed a district court's dismissal of a civil RICO claim for failure to allege a domestic injury, where Ghanaian nationals claimed that their funds were misappropriated by a Ghanaian entity that then transferred those funds to shell companies in the United States. The panel ruled that the plaintiffs had no expectation that their money would end up within the United States, and the defendants' unilateral decision to transfer funds to American companies did not domesticate the plaintiffs' injuries (*Percival Partners Ltd. v. Nduom*).
- **Criminal Law & Procedure:** The Fourth Circuit joined the Ninth Circuit in holding that a provision of the Speedy Trial Act, 18 U.S.C. § 3161(h)(4), which excludes certain periods of delay when computing the time in which an information or indictment must be filed against a criminal defendant, excludes all time during which a defendant is mentally incompetent, regardless of whether other provisions of the Act might otherwise apply (*United States v. Minton*).
- **Criminal Law & Procedure:** The Seventh Circuit affirmed a criminal defendant's conviction and sentence under the Anti-Riot Act, which establishes criminal penalties for a person who travels in or uses any facility of interstate or foreign commerce to incite, organize, promote, encourage, or participate in a riot. The panel applied circuit precedent to hold that the statute was not impermissibly overbroad under the First Amendment. The panel also held that the defendant's conviction was covered by the Mandatory Victims Restitution Act, under which a defendant may be made to pay restitution to his or her victims for specified offenses, including an "offense against property" (*United States v. Betts*).

- **Criminal Law & Procedure:** Sitting en banc, the Ninth Circuit joined other circuits in holding that facts underlying factors considered in the sentencing of a criminal defendant must be supported by a preponderance of the evidence. The court overruled prior circuit precedent that required the use of the more stringent clear and convincing evidence standard when the factor would have “an extremely disproportionate effect on the sentence relative to the offense of conviction” (*United States v. Lucas*).
- **Criminal Law & Procedure:** Sitting en banc, the Eleventh Circuit held that when a criminal defendant does not timely object to a sentencing court’s failure to explain its reason for choosing a particular sentence under 18 U.S.C. § 3553(c), a challenge to that omission raised on appeal is reviewed for plain error. Under this standard, the appellate court looks to whether the error was obvious and affected substantial rights of the defendant to undermine the fairness of the proceeding. The court held that, to the extent earlier circuit caselaw held that a district court’s failure to explain its sentence mandated automatic reversal, that precedent was overruled (*United States v. Steiger*).
- **Employee Benefits:** A divided Second Circuit held that an arbitration agreement provision that limited the remedies a retirement plan participant could seek under the [Employee Retirement Income Security Act \(ERISA\)](#) following an alleged breach of fiduciary duty was not enforceable under the [Federal Arbitration Act \(FAA\)](#). Relying on Supreme Court and other appeals court precedent, the panel majority explained that the FAA does not reach agreements that prevent parties from vindicating their statutory rights. The majority held that the arbitration provision at issue prevented an employee benefit plan beneficiary from exercising his full statutory rights under ERISA. The majority held that [Sections 409\(a\) and 502\(a\)\(2\)](#) of ERISA permit a participant to seek plan-wide remedies for certain breaches of fiduciary duties, and that the arbitration agreement impermissibly allowed the plaintiff only to seek remedies for losses to his individual retirement account (*Cedeno v. Sasson*).
- **Environmental Law:** The Third Circuit denied a petition for review of an Environmental Protection Agency (EPA) [plan under the Clean Air Act \(CAA\)](#) to implement national ambient air quality standards for Pennsylvania. The EPA had promulgated an implementation plan after the Third Circuit vacated EPA’s approval of an earlier SIP and directed EPA to either approve a new state implementation plan (SIP) or formulate its own plan. The circuit panel held that the EPA did not exceed its authority under the CAA in promulgating its own plan rather than considering Pennsylvania’s proposed revisions to the SIP, and that the agency did not violate Administrative Procedure Act requirements when formulating its plan (*Keystone-Conemaugh Projects LLC v. EPA*).
- ***Environmental Law:** The Fifth Circuit upheld Louisiana’s decision to issue a pre-construction permit for a liquid natural gas export facility, rejecting the petitioner’s arguments that the decision was arbitrary and capricious because the facility’s emissions would exceed national ambient air quality standards and the permit did not require the facility to use best available control technologies to limit emissions. In so doing, the panel widened a circuit split on the appropriate standard of review that federal courts should employ when reviewing state agency action. The panel joined the Third Circuit in holding that the state agency should be afforded the same deference they would receive under state law, expressing disagreement with the Fourth Circuit’s application of the Administrative Procedure Act’s arbitrary and capricious standard to state agency action (*Sierra Club v. La. Dep’t of Env’tl Quality*).
- **Health:** In consolidated cases, a divided en banc Fourth Circuit held that North Carolina’s state employee health care plan and West Virginia’s Medicaid program

violated the [Equal Protection Clause](#) by excluding coverage for some health care services to treat gender dysphoria while covering those services in other contexts. The states argued that the policies were facially neutral toward transgender persons because, while they excluded certain treatments for gender dysphoria, they provided transgender and nontransgender persons the same medical coverage. The en banc majority rejected this argument, holding that gender dysphoria served as a proxy for transgender status and that the coverage restrictions turned on sex-based classifications. The majority therefore subjected the policies to intermediate scrutiny under the Equal Protection Clause and held that the states failed to provide an adequate justification for the restrictions to withstand such scrutiny. The majority also held that the West Virginia policy violated the [Affordable Care Act's prohibition on sex-based discrimination](#) in health programs receiving federal assistance, as well as federal Medicaid regulations' [prohibition](#) on the arbitrary denial of medically necessary treatment by state Medicaid programs and the prohibition on denying Medicaid benefits to some groups that are available to others with the same needs (*Kadel v. Folwell*; *Anderson v. Crouch*).

- **Health:** A Ninth Circuit panel withdrew an opinion that upheld a district court's preliminary injunction blocking enforcement of an Idaho law related to transgender athletes and said that an amended opinion is forthcoming. (The earlier opinion is discussed in a [prior Congressional Court Watcher edition](#).) The panel's brief order stated that the withdrawal was made in light of the Supreme Court's recent order in *Labrador v. Poe*, which narrowed the scope of a preliminary injunction in a case challenging the constitutionality of an Idaho law barring health care professionals from providing certain medical treatments to transgender minors. In that case, the Supreme Court limited the injunction only to the plaintiffs in the case (*Hecox v. Little*).
- **International Law:** The Eleventh Circuit upheld the denial of a parent's petition pursuant to the [Hague Convention on Civil Aspects of International Child Abduction](#) and its implementing statute, the [International Child Abduction Remedies Act](#), on the ground that the lower court properly applied one of the "[narrow exceptions](#)" to the requirement that children who were wrongfully removed from their home country be "[promptly returned](#)." Where an abandoned parent files a petition more than one year after the child's wrongful removal, the court generally must order the return of the child unless it finds that the child "[is now settled in its new environment](#)." Observing that the question of whether this exception applies requires a fact-intensive factor-based analysis, the circuit court held that, although a child's lack of permanent legal status is one relevant factor in deciding whether a child is "now settled" in the United States, it is not necessarily dispositive. The circuit panel ruled that the lower court did not abuse its discretion in deciding that other factors supported a finding that the child was settled and that the exception applied notwithstanding the child's lack of lawful permanent resident status (*Cuenca v. Rojas*).
- **Labor & Employment:** A divided Tenth Circuit held that the lower court did not err in denying plaintiffs' motion to preliminarily enjoin enforcement of a Department of Labor (DOL) rule, which imposes a \$15 minimum hourly wage requirement on most federal contractors, as applied to recreational services outfitters that provide guided tours to visitors on federal lands. The DOL rule was promulgated pursuant to [Executive Order 14026](#), which was issued by President Biden under the [Federal Property and Administrative Services Act \(FPASA\)](#). That statute enables the President to prescribe policies deemed necessary to carry out the FPASA, including to "provide the Federal Government with an economical and efficient system for . . . [p]rocuring and supplying property and nonpersonal services." The majority understood this authority to cover the

federal government's provision of nonpersonal services both to itself and to the public. The majority also decided that the plaintiffs were unlikely to succeed in their argument that the minimum-wage requirement was arbitrary and capricious in light of the FPASA's purpose of providing an "economical and efficient system" for covered services, as the agency had determined that the wage increase would improve morale and productivity (*Bradford v. U.S. Dep't of Labor*).

- **Securities:** The Sixth Circuit affirmed the district court's dismissal of a suit alleging fraudulent activity and false or misleading statements under federal securities law. In so doing, the panel joined other circuits in holding that the [Private Securities Litigation Reform Act's safe-harbor provision](#) for certain forward-looking statements was not intended to supplant the Bespeaks Caution doctrine. The judicially created doctrine generally shields entities from securities fraud claims for forward-looking statements accompanied by meaningfully cautionary language that renders immaterial any alleged omission or misstatement (*Kolominsky v. Root, Inc.*).
- **Tax:** Reversing the Tax Court, the D.C. Circuit held that [Section 6038](#) of the Internal Revenue Code authorized the Internal Revenue Service (IRS) to assess and administratively collect penalties owed by a U.S. person who failed to report his control of a foreign business. The court rejected arguments that the IRS must bring suit in federal court to collect the sums owed for the reporting violation (*Farhy v. Comm'r of Internal Revenue*).

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