

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (June 10–June 16, 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

Last week, the Supreme Court issued six decisions in cases for which it heard arguments:

- **Abortion:** In a 9-0 decision, the Court held that the plaintiff medical associations and physicians who do not prescribe or use mifepristone, a medication abortion drug, did not satisfy constitutional standing requirements needed to challenge Food and Drug Administration (FDA) actions in 2016 and 2021 that relaxed restrictions on the marketing and dispensing of mifepristone (*FDA v. All. for Hippocratic Med.; Danco Labs., L.L.C. v. All. for Hippocratic Med.*).
- **Bankruptcy:** The Court issued a decision addressing the appropriate remedy for individuals affected by its 2022 ruling in *Siegel v. Fitzgerald*. In *Siegel*, the Court had held that the [Bankruptcy Judgeship Act of 2017](#) violated the uniformity requirement of the Constitution’s [Bankruptcy Clause](#) by requiring higher disbursement fees to be imposed under certain circumstances on certain debtors in Trustee districts than for

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equivalent debtors in Bankruptcy Administrator districts. Here, the Court held 6-3 that the appropriate remedy for this disparity is the prospective application of uniform fees in all districts, not the retroactive raising of fees for those who paid lower fees or reimbursements for those who paid higher fees under the 2017 statute (*United States Trustee v. John Q. Hammons Fall 2006, LLC*).

- **Firearms:** The Court ruled 6-3 that a nonmechanical bump stock is not a machinegun under 26 U.S.C. § 5845(b). In a 2018 [final rule](#), the Bureau of Alcohol, Tobacco, Firearms, and Explosives classified bump stocks, which are accessories that attach to semiautomatic weapons to increase the rate of fire, as machineguns for purposes of the [National Firearms Act](#) and the federal statutory ban on the possession or transfer of new machineguns. Accordingly, the Court affirmed the decision of the Fifth Circuit, reversing the district court's judgment and remanding with instructions to enter judgment for the plaintiff-respondent and to decide whether to vacate the rule or impose a more limited remedy (*Garland v. Cargill*).
- **Immigration:** In consolidated cases, the Court decided 5-4 that an alien ordered removed in absentia could not seek rescission of that order when the initial notice to appear at a removal proceeding was defective but the alien later received adequate notice of the impending proceedings under 8 U.S.C. § 1229(a)(2) and nonetheless failed to appear (*Campos-Chaves v. Garland; Garland v. Singh*).
- **Intellectual Property:** In a fractured opinion, the Court held that [Section 2\(c\)](#) of the Lanham Act, which bars the registration of a trademark that includes the name of a living person without his or her written consent, is a viewpoint-neutral, content-based restriction that does not violate the First Amendment. The Court concluded that the U.S. Patent and Trademark Office did not violate the free speech rights of an applicant by refusing trademark registration based on the Lanham Act's names clause of a trademark that included former President Donald Trump's name for use on clothing (*Vidal v. Elster*).
- **Labor & Employment:** In an opinion joined by eight Justices, the Court held that when a reviewing court considers a request for preliminary injunctive relief under [Section 10\(j\)](#) of the National Labor Relations Act, the court must employ the traditional four-part test for evaluating the propriety of injunctive relief, rather than a two-part test rooted in Sixth Circuit precedent that was used by the district court and that merely asks whether there is reasonable cause to believe unfair labor practices occurred and whether injunctive relief is "just and proper." Justice Jackson concurred in the judgment but wrote separately to convey a concern that the decision ignored Congress's direction in the NLRA giving courts discretion when presiding over labor disputes (*Starbucks Corp. v. McKinney*).

The Court also granted certiorari to consider the following cases for next term:

- **Medicaid & Medicare:** The Court agreed to hear a case of statutory interpretation that could affect the amount of additional Medicare payments that hospitals serving a high percentage of low-income patients may receive. The question before the Court is whether the Centers for Medicare & Medicaid Services correctly interpreted the phrase "entitled to [supplementary security income (SSI)] benefits" in the [payment formula](#) to refer to only those patients who actually received health benefits during their hospital stay. This case follows *Becerra v. Empire Health Foundation*, in which the Court concluded that the phrase "entitled to [Medicare Part A] benefits" means all patients who qualify for Part A, not merely those who received those benefits for part or all of a hospital stay, but expressly left unresolved the meaning of "entitled to [SSI] benefits" (*Advocate Christ Med. Ctr. v. Becerra*).

- **Securities:** The Court agreed to hear a case to resolve a circuit split regarding the scope of what must be disclosed in the “risk factors” section of a public company’s 10-K filing. Some circuits hold that companies must disclose that a risk materialized in the past if the company knows it will harm the business, while the Sixth Circuit holds that companies need not disclose such past risks. This case arises out of the Ninth Circuit, which adopted a third position that companies must disclose risks that materialized in the past even where there is no known threat of business harm. The Court declined to hear a second issue raised by the petitioner, for which a split also exists among the circuits, regarding the proper pleading standard for the loss causation element of a private securities-fraud claim (*Facebook, Inc. v. Amalgamated Bank*).

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.

- ***Civil Procedure:** In a per curiam decision, the Seventh Circuit sided with the majority view of a circuit split regarding the time limit for appealing a district court’s order under a statutory provision colloquially known as the [Hyde Amendment](#), which permits criminal defendants to recoup fees incurred in the course of defending against a federal prosecution that was “vexatious, frivolous, or in bad faith.” Before considering the merits of the petitioner’s challenge to the district court’s denial of his motion for fees, the panel first considered the government’s argument that the petitioner had not timely appealed the lower court’s decision. The panel rejected the government’s position, and that of at least one other circuit, that defendants have only 14 days to appeal a Hyde Amendment order. The panel joined the majority of circuit courts that have considered the matter and held that such appeals are subject to the more generous 60-day *civil* time limit from a final judgment, rather than the 14-day deadline for *criminal* appeals, because Hyde Amendment motions are civil in nature. Finding the petitioner’s appeal was timely, the panel nonetheless affirmed the district court’s denial of fees, though on different grounds than the lower court (*United States v. Onamuti*).
- **Civil Rights:** The Second Circuit affirmed summary judgment for a public bus service in a case brought under the [Americans with Disabilities Act](#) (ADA) by a paralyzed individual who uses a wheelchair for mobility. The court also agreed that the availability of paratransit services does not relieve a bus service of its obligation to make its regular routes “[readily accessible](#)” to individuals with disabilities. It held in this case, however, that the bus service was readily accessible, and that the defendant’s action in altering signage at its bus stops did not trigger a duty to make [accessibility upgrades](#) to other portions of the stops (*Woods v. Centro of Oneida, Inc.*).
- **Criminal Law & Procedure:** The D.C. Circuit affirmed the lower court’s denial of a criminal defendant’s request for vacatur of his convictions under [18 U.S.C. § 924\(c\)](#) for using a firearm in connection with a “crime of violence.” The panel rejected the defendant’s arguments that a predicate offense under [21 U.S.C. § 848\(e\)](#), which sanctions those who cause the intentional killing of another as part of a continuing criminal enterprise, does not constitute a crime of violence. Section 924(c) [defines](#) a crime of violence as an offense having “as an element the use, attempted use, or threatened use of physical force against the person or property of another.” The circuit panel disagreed with the defendant’s arguments that a Section 848(e) offense is not a crime of violence because it covers instances where a killing is not directly and actively perpetrated by the

defendant himself. The panel joined every other circuit in holding that those who aid and abet a crime of violence done by others have likewise committed a crime of violence. The panel further held that an intentional killing under Section 848(e) necessarily involves the use of force against another, regardless of whether that force is employed directly or indirectly, is carried out by another, or whether the victim's death is accomplished through action or deliberate omission (*United States v. Smith*).

- ***Criminal Law & Procedure:** The Second Circuit reversed a district court's decision to grant the appellee's motion for compassionate release from custody. [Section 3582\(c\)\(1\)\(A\)\(i\)](#) of Title 18 of the *U.S. Code* authorizes the court to reduce a federal prisoner's term of imprisonment for "extraordinary and compelling reasons." The circuit panel concluded that the lower court abused its discretion in considering the appellee's "potential innocence" claim because potential-innocence claims must be brought under [28 U.S.C. § 2255](#). The panel further concluded that the disparity between his sentence and his codefendants was not an extraordinary or compelling reason for a sentence reduction, because there were valid justifications for the disparity in this case. With its decision, the Second Circuit joins the majority of a lopsided circuit split, where only the [First Circuit](#) has concluded that a trial court may consider nearly any claim as a possible extraordinary and compelling reason (*United States v. Fernandez*).
- **Criminal Law & Procedure:** A Sixth Circuit panel affirmed a criminal defendant's convictions for various health care fraud and mail fraud offenses. The panel interpreted [21 U.S.C. § 353\(b\)\(1\)](#), which criminalizes dispensing certain drugs without the "written prescription of a practitioner licensed by law to administer such drug." The panel held that the fact that the prescriptions at issue were written by a licensed professional did not preclude Section 353(b)(1) liability. The panel ruled that the statute contained an implicit validity requirement, such that it required a prescription to be based on the considered and lawful action of a licensed professional within a doctor-patient relationship. Finding that no such relationship informed the prescription of drugs here, the panel affirmed the defendant's conviction (*United States v. Bolos*).
- **Criminal Law & Procedure:** The Ninth Circuit upheld a defendant's conviction for committing a hate crime under [18 U.S.C. § 249\(a\)\(2\)](#) and his related conviction under [18 U.S.C. § 924\(c\)\(1\)\(A\)](#) for discharging a firearm during a "crime of violence." The panel rejected the defendant's argument that the hate crimes statute, both on its face and as applied to him, exceeded Congress's power to regulate interstate or foreign commerce under the [Commerce Clause](#). The panel rejected the facial challenge because Section 249(a)(2) specifies that jurisdiction exists only when (1) a weapon used in the hate crime traveled in interstate or foreign commerce or (2) the defendant's conduct affected interstate or foreign commerce. The panel rejected the defendant's as-applied challenge because the government proved that he used firearms and ammunition that traveled across state lines. The panel also concluded, for purposes of Section 924(c) liability, that Section 249(a)(2) was divisible into distinct hate crime offenses. Because the offense for which the defendant was convicted involved an attempt to kill a person, the court held that the defendant's offense constituted a "crime of violence" under Section 924(c)(1)(A) (*United States v. Howald*).
- **Education:** A divided Sixth Circuit panel upheld a preliminary injunction blocking the Department of Education (ED) from enforcing within 20 plaintiff states certain policy documents that address discrimination on the basis of sexual orientation or gender identity in federally funded schools. [Title IX of the Education Amendments of 1972](#) generally bars discrimination based on sex in education programs and activities that receive federal funding. In the challenged documents, ED interprets Title IX's prohibition

to cover discrimination based on sexual orientation and gender identity. The panel majority held that the plaintiff states were likely to succeed in their argument that ED improperly issued the documents without undergoing [notice-and-comment rulemaking](#) under the Administrative Procedure Act (APA). The majority concluded that the documents constituted legislative rules subject to APA requirements because they carry out an express delegation of authority from Congress, impose new obligations on states to investigate claims of discrimination based on sexual orientation or gender identity, and effect substantive changes in regulations because they impose obligations that conflict with existing ED regulations. The majority also held that other factors favoring a preliminary injunction were satisfied. The majority additionally ruled that ED's recently issued regulations implementing its interpretation of Title IX did not moot the case because the regulations do not go into effect until August 2024 and the regulations do not cover certain matters, including student housing and athletics, covered by the documents (*Tennessee v. Dept. of Ed.*).

- **Firearms:** The Ninth Circuit rejected claims by a California gun show operator that its First and Second Amendment rights were violated by [state laws](#) barring the sale of firearms on certain state properties. As to the First Amendment challenge, the court found that the challenged statutes restrict nonexpressive conduct—commercial transactions—and were therefore not subject to First Amendment scrutiny. As to the Second Amendment challenge, the court concluded that the Second Amendment's plain text does not cover contracting for the sale of firearms and ammunition on state property, and the plaintiff failed to show that the statutes meaningfully constrained a person's ability to keep and bear arms given the ability to purchase the same firearms on nonstate properties (*B&L Prods. v. Newsom*).
- ***Environmental Law:** The Ninth Circuit reversed a district court holding regarding the scope of Industrial Stormwater General Permits (ISGP) issued by Washington State pursuant to its [delegated authority](#) under the Clean Water Act (CWA). An environmental organization alleged that a port failed to abide by the state permitting requirements related to a cargo terminal area. Under the federal regulations governing the National Pollutant Discharge Elimination System (NPDES) program, a permit would not have been required for stormwater discharges at the terminal, because that section of the port was not involved in specific categories of operations. The state's permitting regulations, however, imposed more stringent requirements. The court held that the state's general stormwater discharge permit for industrial facilities applies across the entirety of each covered facility, including those portions that would not be required by the NPDES program. Acknowledging a circuit split, the court also rejected arguments that a citizen suit could not proceed under the CWA where the state regulation exceeded the requirements of the federal regulations (*Puget Soundkeeper All. v. Port of Tacoma*).
- ***Immigration:** The Fourth Circuit affirmed a Board of Immigration Appeals (BIA) decision upholding the denial of applications for asylum and withholding of removal. The court agreed with the BIA that the petitioners, a brother and sister, failed to show persecution on account of a protected ground, including their membership in a particular social group, in this case defined as "the children of their mother." The court held that the petitioners could not establish the required nexus to a protected ground because they failed to show that their family relationship was "one *central* reason" for their feared persecution. In reaching this conclusion, the court rejected the petitioners' contention that the "one central reason" standard for proving a nexus does not apply to withholding of removal actions, thereby adding to a [circuit split](#) on whether the nexus standard in the

[withholding statute](#) is materially different (and, in the petitioners' view, less onerous) than that found in the [asylum statute](#) (*Diaz-Hernandez v. Garland*).

- **Indian Law:** The Ninth Circuit affirmed a district court's order compelling arbitration between the Choctaw Nation (Nation) and Caremark, LLC, after the Nation filed a lawsuit in federal court alleging Caremark violated the [Indian Health Care Improvement Act](#) in denying the Nation's pharmacy reimbursement claims. The Nation argued that the act rendered the arbitration agreement between the parties unenforceable, but the court held that a delegation clause in the parties' arbitration agreement delegated such threshold arbitrability questions to the arbitrator. The court also rejected the Nation's argument that the district court lacked subject matter jurisdiction over the petition to compel arbitration, because the court concluded the Nation had expressly waived its tribal sovereign immunity by contractually agreeing to arbitrate its claims (*Caremark, LLC v. Choctaw Nation*).
- **Intellectual Property:** The Fourth Circuit held that neither [Section 21](#) nor other provisions of the Lanham Act bar a petitioner from bringing suit under the APA regarding the U.S. Patent and Trademark Office's compliance with applicable laws and regulations concerning trademark registration renewal (*Bacardi & Co. v. U.S. Pat. & Trademark Off.*).
- **International Law:** The Eleventh Circuit rejected constitutional challenges brought by three foreign nationals to their convictions under the [Maritime Drug Law Enforcement Act \(MDLEA\)](#) for trafficking drugs on the high seas using a stateless vessel. The MDLEA was enacted under Congress's power under the [Felonies Clause](#) to "define and punish Piracies and Felonies committed on the high Seas." The circuit court rejected the defendants' argument that their conduct fell outside the scope of the Felonies Clause because it occurred in another country's Exclusive Economic Zone (EEZ)—the area extending beyond a country's territorial waters but within 200 nautical miles of the country's coastal baseline, where that country has special economic rights. The court observed that EEZs did not exist when the Framers adopted the Felonies Clause, and the "high seas" were understood to cover that nautical area outside a country's territorial waters. The court held that EEZs are part of the high seas covered by the Felonies Clause and are covered by the MDLEA (*United States v. Alfonso*).
- **Labor & Employment:** The Seventh Circuit affirmed the decision of an administrative law judge (ALJ) awarding benefits to a former coal miner under the [Black Lung Benefits Act](#), finding that the ALJ did not erroneously apply a "regulatory preamble" as binding law or make factual findings lacking in evidentiary support. The ALJ concluded that the miner suffered from pneumoconiosis based in part on a set of medical findings found in the preamble to Department of Labor [regulations](#). Acknowledging that preambles lack the force of law and have no binding effect on administrative adjudications, the Seventh Circuit noted that ALJs may, given their broad discretion, adopt a preamble's findings so long as those findings are supported by substantial evidence (*Safeco Ins./Liberty Mutual Surety v. Director, Off. Workers' Comp. Programs*).
- **Labor & Employment:** Rehearing a case en banc, the Ninth Circuit affirmed a district court's dismissal of claims challenging a California law that codified the "[ABC](#)" test for determining if app-based delivery or transportation services workers are classified as employees or independent contractors for the purpose of state wage laws, while applying a different test for other app-based workers. The court reinstated the three-judge panel's decision affirming the dismissal of Due Process, Contract Clause, and Bill of Attainder claims brought by Uber, Postmates, and others. However, the en banc court affirmed the

district court's dismissal of the plaintiff's equal protection claims, which had been reversed by the panel. The court concluded that under rational basis review, "plausible reasons" exist for the law codifying the ABC test for some industries and not for others, and thus the state law did not violate equal protection principles under either the U.S. or California State Constitutions (*Olson v. California*).

- **Sovereign Immunity:** The D.C. Circuit affirmed the denial of a Brazilian state-owned oil company's motion for summary judgment based on its assertion of immunity under the [Foreign Sovereign Immunities Act](#) (FSIA), concluding that there was sufficient evidence to establish that the "direct-effect" exception to the FSIA applied in a U.S. investment fund's fraud suit against the company. This exception permits suits against foreign states or their instrumentalities based on an act related to commercial activity when the act occurs outside U.S. territory and "causes a direct effect in the United States." According to the panel, to qualify for the exception, the effect must be an "immediate" consequence of the defendant's activity in the United States, but the defendant's activity need not be the only cause. The court held that the plaintiff alleged sufficient facts here—involving a sustained course of dealing by the defendant to obtain an equity investment of hundreds of millions of dollars—to allow the case to proceed (*EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A.*).

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