

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (July 1–July 7, 2024)

July 8, 2024

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.

Following this edition of the *Congressional Court Watcher*, the series will convert from a weekly to a monthly series. The new format will focus primarily on federal appellate court decisions recognizing a split among the courts on a key legal issue resolved in the case, leading to the non-uniform application of federal law.

Decisions of the Supreme Court

Last week, the Supreme Court issued its final opinions of the October 2023 term. The Court issued three decisions in cases for which it heard arguments:

- **Administrative Law:** The Court resolved a circuit split over how [28 U.S.C. § 2401](#), which sets a default six-year statute of limitations for civil actions against the United States, applies to challenges brought against agency action under the Administrative Procedure Act. In a 6-3 decision, the Court held that the statute of limitations is not triggered when the agency issues the challenged rule but begins when the plaintiff later

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suffers a legal wrong or is otherwise aggrieved by the agency action (*Corner Post, Inc. v. Bd. of Governors*).

- **Separation of Powers:** In a 6-3 decision, the Supreme Court set forth a framework for assessing a former President's immunity from criminal prosecution for actions taken while in office. The majority held that former Presidents retain absolute immunity for official actions involving their core constitutional functions. The majority held that former Presidents receive at least presumptive immunity for other official acts. Finally, the majority held that a former President is not immune from prosecution for unofficial acts. In the case before it, concerning a federal criminal indictment against former President Trump for allegedly attempting to overturn the results of the 2020 election, the Court held that the former President was absolutely immune from charges involving communications with the Justice Department to allegedly engage in improper election-related prosecutions, including threatening to remove the acting Attorney General for resisting the request. The majority also ruled that the lower courts would need to decide, in the first instance, how the Court's immunity framework applied to charges relating to the former President's actions directed toward Vice President Mike Pence, state officials, and private parties to allegedly overturn the election results (*Trump v. United States*).
- **Speech:** By a 9-0 vote, the Court vacated and remanded cases from the Fifth and Eleventh Circuits on Texas and Florida laws that would restrict some internet platforms' ability to moderate user content. The Fifth Circuit reversed a preliminary injunction halting enforcement of the Texas law, while the Eleventh Circuit upheld a preliminary injunction blocking provisions of the Florida law. The portion of the Court's controlling opinion joined by six Justices held that the lower courts had not conducted an appropriate analysis of the plaintiffs' claims that the state laws were facially unconstitutional under the First Amendment—an analysis that directs the reviewing court to consider whether the law restricts a substantial amount of constitutionally protected speech relative to the law's legitimate sweep. The portion of the controlling opinion joined by five Justices further suggested that editorial judgments influencing the content of Facebook's News Feed and YouTube's homepage were protected expressive activity and that Texas's stated interest in changing the mix of viewpoints presented by these feeds was not a legitimate reason to restrict protected speech (*Moody v. NetChoice, LLC; NetChoice, LLC v. Paxton*).

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

- **Criminal Law & Procedure:** In consolidated cases from the Fifth Circuit, the Court is asked to resolve a circuit split over how [Section 403\(b\) of the First Step Act](#) applies to pending cases regarding violations of [18 U.S.C. § 924\(c\)](#), which establishes heightened penalties when a "crime of violence" or drug trafficking crime is committed with a firearm. Section 403(b) provides that the First Step Act's amendments apply to a covered offense committed before the Act was enacted, so long as the sentence for that covered offense had not been imposed as of the Act's date of enactment. The Court is asked whether Section 403(b) applies to the post-enactment resentencing of a defendant whose pre-enactment sentence was vacated after the First Step Act became law (*Hewitt v. United States; Duffey v. United States*).
- **Food & Drug:** The Court granted certiorari in a case from the Fifth Circuit that ruled that the Food and Drug Administration (FDA) acted arbitrarily and capriciously when it denied electronic cigarette manufacturers' premarket tobacco applications (PMTAs) to sell flavored tobacco products. The Fifth Circuit joined the Eleventh Circuit, which reviewed similar PMTA denials, in holding FDA's actions were arbitrary and capricious

and split with the Second, Third, Fourth, Seventh, and Ninth Circuits, which upheld the FDA's actions in denying other similar electronic cigarette PMTAs (*FDA v. Wages & White Lion Invs., LLC*).

- **Immigration:** The Court agreed to hear a case from the Tenth Circuit over the method for computing the maximum period, after an alien is found removable, during which the alien may be permitted to voluntarily depart the United States or file an administrative motion to reopen the proceedings. Under 8 U.S.C. § 1229c(b)(2), an immigration judge provides that an immigration judge may issue an order granting the alien the ability to voluntarily depart the country instead of ordering their removal and that the voluntary departure period may last up to 60 days. The Court is asked whether the voluntary departure period is extended to the next business day when the 60th day falls on a federal holiday or weekend (*Monsalvo Velazquez v. Garland*).
- **Speech:** The Court agreed to hear a case from the Fifth Circuit concerning a Texas law that requires websites that publish sexual content to verify the age of their visitors and display certain health warnings about consuming pornography. The Court is asked whether the lower court appropriately applied rational-basis review to the age-verification requirement, on account of the law regulating the distribution of pornography to minors, or whether the law should have been reviewed under strict scrutiny on account of the burden imposed on adults' access to protected speech (*Free Speech Coal., Inc. v. Paxton*).

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.

- **Antitrust:** The Second Circuit affirmed the district court's dismissal of a Broadway producer's antitrust claim against a union under the [statutory labor exemption](#) derived from the Clayton and Norris-LaGuardia Acts. The producer alleged that a union organized an illegal boycott that prevented him from producing shows, but the producer failed, according to the court, to adequately plead that the statutory labor exemption does not apply to the union's conduct. The Second Circuit joined the Sixth, Seventh, and Ninth Circuits in assigning the burden of proving whether the statutory labor exemption applies to the plaintiff bringing the antitrust claims (*Drabinsky v. Actors' Equity Ass'n*).
- **Criminal Law & Procedure:** The Seventh Circuit determined that furanyl fentanyl is an "analogue" of fentanyl for purposes of 21 U.S.C. § 841(b)(1)(A)(vi), which imposes a 10-year minimum mandatory sentence for certain criminal offenses involving an analogue of fentanyl. The defendant in the case argued that the term "analogue of [fentanyl]" should be interpreted to apply only to a substance that fits the Controlled Substances Act's (CSA's) definition of a "controlled substance analogue" (21 U.S.C. § 802(32)). The term "controlled substance analogue" expressly excludes substances scheduled under the CSA. Because furanyl fentanyl is in Schedule I, the defendant's argument would mean that the mandatory minimum sentence could not apply to the defendant. The Seventh Circuit rejected that argument, agreeing with a prior decision of the Second Circuit holding that "controlled substance analogue" is a term of art under the CSA distinct from the phrase "analogue of [fentanyl]" in § 841(b)(1)(A)(vi). Applying the ordinary meaning of "analogue of fentanyl," the panel concluded that furanyl fentanyl is an analogue of fentanyl (*United States v. Williams*).

- **Election Law:** The Second Circuit rejected equal protection and First Amendment challenges to New York campaign finance laws that establish different contribution rules for political parties and independent, candidate-nominating bodies that lack the statewide support necessary to be deemed political parties under state law. The challenged rules set lower individual contribution limits for independent bodies than for political parties, set lower caps on those bodies' transfer of funds to candidates, and do not give those bodies the same allowance given to political parties to accept unlimited contributions for funding a headquarters, staff, and non-candidate related activities. The panel held that independent bodies were not similarly situated to political parties to support an equal protection claim, largely because those bodies were not subject to an array of structural and operational legal requirements that apply to political parties. In rejecting the plaintiff's First Amendment challenge, the panel held that New York had sufficiently demonstrated the restrictions placed on contributions to independent bodies were supported by a substantial goal of deterring corruption and were closely drawn to serve that goal (*Upstate Jobs Party v. Kosinski*).
- **Employee Benefits:** The Eleventh Circuit panel reversed the district court's determination that an insurance company wrongly denied plaintiff beneficiaries' claim for accidental death benefits under an employee benefits plan, which was governed by the [Employee Retirement Income Security Act](#) (ERISA), on the basis that the insured's death was not an "accident." The panel joined six other circuits that apply a federal common-law definition of "accident" when ERISA plans fail to provide a definition. This common-law definition of "accident" requires courts to consider the subjective expectations of the insured about whether death or injury is highly likely to occur from engaging in the conduct that resulted in the loss. If those subjective expectations are unknowable, the courts should consider an objective analysis of the insured's expectations (i.e., whether a reasonable person would have viewed injury or death as highly likely). The Eleventh Circuit concluded that the insured's death, which occurred during a risky mountain climb during dangerous winter conditions, was not an "accident" (*Goldfarb v. Reliance Standard Life Ins. Co.*).
- **False Claims Act:** The Eighth Circuit joined the Eleventh Circuit in holding that the [Excessive Fines Clause](#) applies in *qui tam* actions brought under the [False Claims Act](#) (FCA) where the government had chosen not to intervene. The Eighth Circuit observed that the Excessive Fines Clause applies to fines imposed by and payable to the government, and the court reasoned that it applied to *qui tam* actions under the FCA because the government maintained sufficient control over the civil action (including through the ability to intervene at any time or to settle the action) and because the government shared in the proceeds of a successful suit. In the case before it, the panel majority held that the punitive damages imposed by the district court were disproportionate to the nature of the defendant's offense and violated the Clause (*Grant v. Zorn*).
- **Federal Courts:** The Ninth Circuit affirmed a district court's decision that class-action lawsuits brought by patients against a health care provider in state court were not removable to federal court under the federal officer removal statute, [28 U.S.C. § 1442\(a\)\(1\)](#). For a party to constitute a federal officer under the removal statute, the circuit panel held that the party must perform a basic governmental task by way of a federal entity's delegation of legal authority. Joining other circuit courts that have considered the issue, the panel concluded that the receipt of federal subsidies in support of the provider's creation and operation of an online patient portal did not cause the provider to function as a federal instrumentality (*Doe v. Cedars-Sinai Health Sys.*).

- ***Immigration:** A divided Fourth Circuit panel upheld the dismissal of a suit brought by a U.S. citizen and her alien spouse alleging that U.S. Citizenship and Immigration Services (USCIS) unreasonably delayed adjudicating the spouse’s application to waive his period of unlawful presence in the United States. Disagreeing with USCIS and at least one other circuit, the majority held that [8 U.S.C. § 1182\(a\)\(9\)\(B\)\(v\)](#), which bars judicial review of “a decision or action” regarding unlawful presence, does not bar review of claims based on agency *inaction* or delay. Still, the majority held that neither governing statutes nor agency regulations required USCIS to adjudicate a waiver application and, thus, that the court lacked jurisdiction over the plaintiffs’ claims (*Lovo v. Miller*).

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