

# Congressional Court Watcher: Circuit Splits from February 2025

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The U.S. Courts of Appeals for the thirteen “circuits” issue thousands of precedential decisions each year. Because relatively few of these decisions are ultimately reviewed by the Supreme Court, the U.S. Courts of Appeals are often the [last word](#) on consequential legal questions. The federal appellate courts sometimes reach different conclusions on the same issue of federal law, causing a “[split](#)” among the circuits that leads to the non-uniform application of federal law among similarly situated litigants.

This Legal Sidebar discusses circuit splits that emerged or widened following decisions from the last month on matters relevant to Congress. The Sidebar does not address every circuit split that developed or widened during this period. Selected cases typically involve judicial disagreement over the interpretation or validity of federal statutes and regulations, or constitutional issues relevant to Congress’s lawmaking and oversight functions. The Sidebar only includes cases where an appellate court’s controlling opinion recognizes a split among the circuits on a key legal issue resolved in the opinion. This Sidebar refers to each U.S. Court of Appeals by its number or descriptor (e.g., “D.C. Circuit” for “U.S. Court of Appeals for the D.C. Circuit”).

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.

- **Criminal Law & Procedure:** The Third Circuit rejected a criminal defendant’s facial and as-applied constitutional challenges to his international sex tourism conviction under [18 U.S.C. § 2423\(c\)](#) (barring U.S. citizens and lawful permanent residents from engaging in illicit sexual conduct in foreign countries). The panel held that Section 2423(c) was a lawful exercise of Congress’s power under the [Foreign Commerce Clause](#) and the [Necessary and Proper Clause](#). In so doing, the panel disagreed with the [Sixth Circuit](#) and joined the [majority of reviewing circuit courts](#) in ruling that the Constitution grants Congress more expansive power to regulate foreign commerce than interstate commerce. Still, the Third Circuit held that the defendant’s convictions would be constitutionally permissible even under the [standard](#) employed in interstate commerce cases, because although Section 2423(c) as applied to the defendant involved noncommercial conduct,

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the provision regulates channels of foreign commerce and activities that substantially affect foreign commerce. (*United States v. Clay*).

- **Firearms:** A Tenth Circuit panel reaffirmed an earlier decision that 18 U.S.C. § 922(g)(1), which bans the possession of firearms by most felons, does not violate the Second Amendment regardless of whether the felony involves a non-violent offense. The court's earlier ruling had been vacated and remanded by the Supreme Court for reconsideration in light of the Supreme Court's intervening decision in the 2023 case of *United States v. Rahimi*, which expounded upon text-and-history test used by the Court to assess whether a law violates the Second Amendment. On remand, the circuit panel now held that *Rahimi* did not abrogate prior circuit precedent upholding Section 922(g)(1). In finding Section 922(g)(1) constitutional, that earlier precedent had relied on the Supreme Court's statement in its 2008 decision in *Heller v. District of Columbia* that its recognition of an individual right to bear arms under the Second Amendment did not displace "longstanding prohibitions on the possession of firearms by felons." The Tenth Circuit noted disagreement with the Sixth Circuit's determination that its *Heller*-based precedent was no longer binding in a Second Amendment challenge to Section 922(g)(1), even though after employing the Supreme Court's text-and-history standard as described in *Rahimi*, the Sixth Circuit similarly found Section 922(g)(1) to be constitutional (*Vincent v. Bondi*).
- **Health:** The First Circuit widened a circuit split over the interplay between the Anti-Kickback Statute (AKS) and the False Claims Act (FCA). The AKS includes a criminal prohibition against certain quid pro quo arrangements involving federal health care programs. The statute also provides that a claim seeking payment from a federal health care program "that includes items or services resulting from a violation" of the AKS is a false or fraudulent claim giving rise to liability under the FCA. The First Circuit joined the Sixth and Eighth Circuits in interpreting the AKS's "resulting from" language as establishing a "but-for" causation standard for FCA liability, where the government must prove that the AKS violation actually caused the delivery of medical items or services. The panel disagreed with the Third Circuit's view that FCA liability only requires a sufficient causal connection between the AKS violation and the provision of medical items or services (*United States v. Regeneron Pharms., Inc.*).
- **Religion:** The Eighth Circuit considered claims brought by a prisoner under the Religious Land Use and Institutionalized Persons Act (RLUIPA) against a county and a county jail administrator in her individual capacity. RLUIPA generally prohibits a "government" from imposing a "substantial burden on the religious exercise of a person residing in or confined to an institution," and authorizes suits seeking "appropriate relief." In deciding whether RLUIPA permits claims for money damages, the court observed that RLUIPA was enacted under Congress's Spending Clause authority, and that conditions in Spending Clause legislation must be spelled out unambiguously. Splitting with the Sixth Circuit, the panel held the term "appropriate relief" under RLUIPA had sufficient clarity to encompass the recovery of money damages. While concluding that the prisoner's RLUIPA claim for money damages against the county could proceed, the Eighth Circuit nonetheless held RLUIPA's application against non-recipients of federal funds who were acting in their individual capacities exceeded Congress's spending power. The court therefore ruled that the prisoner's RLUIPA suit against the jail administrator could not proceed (*Barnett v. Short*).

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