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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (May 22–May 28, 2023)

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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 three cases where it had heard arguments:

- **Civil Forfeiture:** A unanimous Court held that when a local government foreclosed and sold a home to satisfy the owner's tax debt, the taxpayer was entitled to the proceeds from the sale in excess of the debt owed, and the government's retention of the surplus violated the Fifth Amendment's Takings Clause (*Tyler v. Hennepin Cnty*).
- **Federal Courts:** In a 9-0 ruling, the Court resolved a circuit split and held that purely legal claims denied at summary judgment are reviewable on appeal after a jury trial, even where those claims had not been reasserted in a post-trial motion under Federal Rule of Civil Procedure 50 (*Dupree v. Younger*).
- **Environmental Law:** The Court considered the appropriate standard for identifying "waters of the United States" under the Clean Water Act (CWA), and specifically when CWA jurisdiction extends to certain wetlands adjacent to other jurisdictional waters. While the Court unanimously agreed that the lower court applied the wrong standard, it

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split 5-4 on the appropriate test. The majority formally adopted the approach taken by a four-Justice plurality in the 2006 case of *Rapanos v. United States*, which generally construes the reach of the CWA more narrowly than the approach used by the courts of appeals since *Rapanos*. Under this test, "waters" are limited to (1) relatively permanent bodies of water connected to traditional interstate navigable waters and (2) to wetlands that are a part of the waters of the United States under the CWA when they have a continuous surface connection to bodies that are "waters of the United States" in their own right, so that there is no clear demarcation between the bodies (*Sackett v. EPA*).

The Court also granted certiorari and issued a summary reversal of a Sixth Circuit ruling upholding sanctions imposed by the Federal Deposit Insurance Corporation (FDIC) against the petitioner. Although a divided circuit panel found that the FDIC committed legal error when deciding to impose sanctions, the panel still upheld the agency action after concluding that substantial evidence supported the FDIC's decision. In a per curiam opinion, the Court held that the circuit court should have remanded the case to the agency so that it could determine liability using the correct legal standard. The Court declined to consider the petitioner's constitutional challenge to the FDIC's structure (*Calcutt v. FDIC*).

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 Rights:** The Fourth Circuit held in a divided decision that a high school's admissions policy did not violate the Fourteenth Amendment's Equal Protection Clause. The court reviewed claims that the highly selective magnet school changed its admissions criteria to reduce Asian American enrollment. Finding no intentional discrimination and concluding that the facially neutral admissions criteria did not disadvantage Asian Americans, the majority assessed the changes under rational basis review. As a result, the majority reversed the district court judgment for the plaintiffs and remanded for summary judgment in favor of the school board (*Coal. for TJ v. Fairfax Cnty. Sch. Bd.*)
- **Criminal Law & Procedure:** The Fourth Circuit joined several other circuits in holding that a district court may enforce in a later trial a stipulation entered into in an earlier trial. A criminal defendant objected to the government's motion to enforce a prior stipulation that the defendant's alleged robberies affected interstate commerce. Reasoning that the most important factor to consider is the parties' intention at the time to limit or not limit a stipulation to only one proceeding, the court held that nothing in the relevant stipulation's language limited its applicability to the first trial (*United States v. Robertson*).
- **Criminal Law & Procedure:** The Ninth Circuit held that a state post-conviction relief (PCR) application is "pending" under 28 U.S.C. § 2244(d)(2) for purposes of tolling the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) as long as a state avenue for relief remains open, whether or not a petitioner takes advantage of it. An Arizona prisoner appealed a district court's dismissal of his habeas petition as untimely since AEDPA's one-year limitations period had elapsed. The prisoner and the state disagreed as to when a state PCR is no longer "pending" under § 2244(d)(2), ending the statutory tolling period and starting the AEDPA one-year limitations period for bringing a habeas petition. The court held that the clock did not start on the AEDPA one-year limitations until the expiration of an extension of time the prisoner had obtained but never used to receive reconsideration from the state court (*Melville v. Shinn*).

- **Environmental Law:** The D.C. Circuit denied most claims brought by environmental groups to the Federal Energy Regulatory Commission's (FERC's) approval of the construction of the Mountain Valley Pipeline, an interstate natural gas pipeline, in Virginia and West Virginia. The court agreed with the groups that FERC had not adequately explained why it did not prepare a supplemental environmental impact statement on severe erosion and sedimentation along the pipeline's right-of-way. The court did not vacate FERC's orders relating to the authorization and continuation of the project, but remanded the orders so FERC could either prepare a supplementary environmental impact statement or better explain why a statement was unnecessary. The D.C. Circuit's decision does not disrupt rulings made by the Fourth Circuit vacating federal permits for the project issued by other agencies and discussed in prior editions of the *Congressional Court Watcher* (*Sierra Club v. FERC*).
- **Immigration:** The Ninth Circuit reversed a district court's order dismissing an indictment under 8 U.S.C. § 1326, which criminalizes unlawful alien reentry following removal from the United States, after deciding that the lower court wrongly concluded the statute violated equal protection principles. The circuit court found that the legislative history behind § 1326's enactment did not support the lower court's conclusion that the law, while facially neutral as to race, was motivated by discriminatory animus toward Mexicans and Central and South Americans. Because the circuit court held that the equal protection challenge to § 1326 failed under the usual test for assessing discriminatory animus claims, it declined to decide whether immigration laws should be reviewed under a more deferential standard (*United States v. Carrillo-Lopez*).
- **Labor & Employment:** The Sixth Circuit held that a right to recover punitive damages under the Surface Transportation Assistance Act (STAA) does not survive a claimant's death. An employee who brought an administrative action against a former employer for unlawful retaliation died before an administrative law judge (ALJ) issued a final decision awarding damages. The court, recognizing that Congress and no other court had addressed the survivability issue as to the STAA, relied on federal common-law principles in reasoning that punitive claims to punish the defendant, rather than remedial claims, do not survive a party's death. As a result, the court affirmed the Administrative Review Board's decision reversing the ALJ's punitive damage award but upholding an award of backpay, compensatory damages, and attorney fees to the employee's estate (*Weatherford U.S., L.P. v. U.S. Dep't of Lab.*).

- ***Tax:** The Fourth Circuit added to a circuit split over the relationship between the common-law mailbox rule, which involves presumptions related to the timeliness and delivery of documents sent by U.S. mail, and the statutory mailbox rule specific to tax filings in 26 U.S.C. § 7502. While deciding that a taxpayer could proceed in a suit seeking a federal tax refund, the court joined the Second and Sixth Circuits in deciding that § 7502 supplanted the common-law rule for tax filings. This position contrasts from that of the Eighth and Tenth Circuit, which held that § 7502 supplements the common-law rule (*Pond v. United States*).

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