

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (July 31, 2023–August 6, 2023)

August 7, 2023

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

No Supreme Court opinions or grants of certiorari were issued last week. The Supreme Court’s next term is to begin October 2, 2023.

Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) indicate cases in which 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.

- **Abortion:** The Ninth Circuit vacated a preliminary injunction against Guam’s informed-consent law requiring an in-person meeting with a physician before an abortion. Citing [Dobbs v. Jackson Women’s Health Organization](#) to apply [rational-basis review](#) to assess alleged violations of the [Due Process Clause](#), the court held that the in-person requirement furthers Guam’s legitimate government interests. The court rejected the argument that the in-person requirement undermines informed consent because no

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physicians currently provide abortion services in Guam. Additionally, and again applying rational-basis review, the court rejected the [equal protection](#) claim that the in-person requirement treats physicians who provide abortions differently than telemedicine providers. The court explained that abortion is meaningfully different from other medical procedures (*Raidoo v. Moylan*).

- **Bankruptcy:** Taking a narrow view of a bankruptcy court’s civil contempt power, the Second Circuit reversed the denial of the motion of Citigroup, Inc. and Citibank, N.A. (the defendants) to dismiss a putative class action filed in bankruptcy court. The named debtor, out of whose bankruptcy this appeal arose, filed the lawsuit on behalf of a nationwide class of former debtors who contended that the defendants should be held in contempt for violating the debtors’ discharge orders. The Second Circuit held that the contempt power under the Bankruptcy Code does not authorize a bankruptcy court to enforce other bankruptcy courts’ discharge orders. The court also held that a bankruptcy court does not have the authority to hear and adjudicate a class-wide contempt proceeding. The court did, however, authorize the named debtor’s individual action to proceed (*Citigroup, Inc. v. Bruce (In re Bruce)*).
- **Bankruptcy:** Joining the Third and Fourth Circuits, the Sixth Circuit held that a [shared responsibility payment](#) required by the [Affordable Care Act](#) (ACA) qualifies as a “tax . . . measured by income” entitled to priority in a bankruptcy proceeding under [11 U.S.C. § 507\(a\)\(8\)](#). The individual mandate of the ACA, no longer in effect, required an individual who did not maintain health insurance to make the shared responsibility payment to the Internal Revenue Service. In a dispute over whether the payment qualifies as a tax or a penalty in the bankruptcy context, the court looked to the functional operation of the ACA provision and concluded that it operates as a tax (*In re Juntoff*).
- ***Civil Procedure:** The Ninth Circuit reversed a district court’s stay issued pursuant to the Supreme Court’s decision in *Colorado River Water Conservation District v. United States (Colorado River)*. Under *Colorado River*, federal courts can stay a federal case in “exceptional circumstances” during pendency of state court litigation on related claims. The court, acknowledging conflicting authority from at least one circuit, joined other circuits in holding that a *Colorado River* stay cannot issue when there is substantial doubt as to whether the state proceedings would resolve the federal action. In this case, federal litigation would only be resolved if the parallel state court proceedings end in one of several possible outcomes, which the court held was too uncertain to justify a stay (*Ernest Bock, LLC v. Steelman*).
- ***Civil Rights:** The Seventh Circuit upheld preliminary injunctions allowing transgender boys to use boys’ bathrooms and locker rooms in their schools. The court declined to overrule a [prior decision](#) that equated discrimination based on gender identity to sex discrimination. Recognizing a circuit split in cases with substantially similar facts, the court held, among other things, that the plaintiffs were likely to succeed on their claims alleging sex discrimination in violation of [Title IX](#) of the Education Amendments Act of 1972 and the [Equal Protection Clause](#) of the Fourteenth Amendment (*B. E. v. Vigo Cty. Sch. Corp.*).
- ***Criminal Law & Procedure:** The Third Circuit held that a federal defendant who obtains habeas relief under [28 U.S.C. § 2255](#) but wishes to appeal the district court’s choice of remedy under that provision must obtain a certificate of appealability (COA) in accordance with [28 U.S.C. § 2253\(c\)](#). If a district court determines that a defendant’s sentence is unlawful under § 2255, it then selects between discharging the defendant, resentencing, granting a new trial, or correcting the sentence. In holding that a COA is

required to appeal a district court's choice among these options, the Third Circuit aligned with the Eleventh Circuit but rejected the contrary position of the Fourth and Sixth Circuits (*Clark v. United States*).

- **Criminal Law & Procedure:** In a case challenging the seizure and forfeiture of cash by the Drug Enforcement Administration based on suspicions that the money was from illegal drug activity, the Seventh Circuit held that the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) provides the [exclusive remedy](#) to set aside an agency's declaration of civil forfeiture and only permits challenges to the adequacy of an agency's [notice](#) of the forfeiture. The court denied equitable relief to the plaintiff for failing to follow the process under CAFRA to challenge the forfeiture (*Wilson v. United States*).
- **Criminal Law & Procedure:** A divided Seventh Circuit held, among other things, that to state a civil claim under the Trafficking Victims Protection Reauthorization Act of 2003, a plaintiff need only plausibly allege that the defendant had constructive knowledge that a business partner generally violated the statute. [18 U.S.C. § 1595](#) creates a civil cause of action for victims of sex trafficking against persons who knowingly benefit from sex trafficking. The court allowed a claim of participant liability to go forward against a defendant that allegedly knew or should have known that a business partner generally violated [§ 1591](#)—which criminalizes sex trafficking of children by force, fraud, or coercion—even where there was no allegation the defendant had constructive knowledge that the business partner violated [§ 1591](#) with respect to the specific victim who brought the civil action (*Rose v. Salesforce.com, Inc.*).
- **Criminal Law & Procedure:** A divided Ninth Circuit held that Congress did not exceed its authority under the enforcement clause of the [Thirteenth Amendment](#) by enacting a federal hate crimes statute, [18 U.S.C. § 249\(a\)\(1\)](#). The court explained that [Section Two](#) of the Thirteenth Amendment gives Congress the power to pass laws necessary and proper to eliminate the “badges” and “incidents” of slavery. The court added that an exercise of this enforcement authority is subject to rational basis review, not heightened scrutiny. Joining five other circuits, the Ninth Circuit held that Congress rationally concluded that racially motivated violence is a badge or incident of slavery (*United States v. Hougen*).
- ***Criminal Law & Procedure:** The Ninth Circuit reaffirmed its position that, pursuant to the Supreme Court's ruling in *Kisor v. Wilkie*, courts may defer to the U.S. Sentencing Commission's official commentary interpreting the U.S. Sentencing Guidelines only if the court determines that the relevant Guideline is genuinely ambiguous and the court has exhausted all traditional tools of construction. The court acknowledged that the Sixth Circuit shares its view and that the Fourth Circuit has taken the opposite approach, specifically that, under the Supreme Court's ruling in *Stinson v. United States*, the Commission's official commentary is binding, unless it is plainly erroneous, inconsistent with the Guideline provision itself, or violates the Constitution. The Ninth Circuit reasoned that *Kisor* effectively modified the cases on which *Stinson* was based, limiting the scope of the deference announced in *Stinson* (*United States v. Scheu*).
- **Criminal Law & Procedure:** The Eleventh Circuit held that a state crime of possessing a listed chemical subject to the Controlled Substances Act, with reasonable cause to believe the chemical would be used to manufacture a controlled substance, is not a predicate “serious drug offense” under the [Armed Career Criminal Act \(ACCA\)](#). The ACCA defines a serious drug offense as including “manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance.” The Eleventh Circuit held that the state offense of possessing a listed chemical with “reasonable cause

to believe” that some person would use it for manufacturing a controlled substance was too far removed from the actual conduct of manufacturing to fall under the ACCA’s definition of “serious drug offense” (*United States v. Miles*).

- **Education:** The Second Circuit held that the fee shifting provision of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(i)(3)(B)(i)(I), permits a court to award attorneys’ fees and related costs to an individual bringing an action on his own behalf seeking required educational services from a state agency. IDEA permits a court to award fees to a parent of a child with a disability, and defines “parent” broadly to include an “individual who is legally responsible for the child’s welfare.” In a case where a disabled individual without a parent or guardian prevailed in an administrative proceeding, the Second Circuit held that the individual was acting as his own parent under the statute (*J.S. v. New York Dep’t of Corr. and Cmty. Supervision*).
- **Environmental Law:** The Seventh Circuit held that the term “report” as used in 33 U.S.C. § 2283(d)(1) refers only to reports submitted to Congress by the Army Corps of Engineers (Corps) to propose water resources projects. Only such reports are required by the Water Resources Development Act of 2007 to include a [specific mitigation plan](#). The court also held that the [National Environmental Policy Act](#) only requires the Corps to consider reasonable alternatives and that courts owe deference to the agency’s determination of which alternatives are reasonable (*Nat’l Wildlife Fed’n v. United States Army Corps of Eng’rs*).
- **False Claims Act:** The Ninth Circuit held that the public disclosure bar for a *qui tam* action brought under the False Claims Act did not apply to [inter partes review](#) (IPR), an administrative proceeding to cancel a patent before the Patent Trial and Appeal Board, an adjudicatory branch of the U.S. Patent and Trademark Office. The public disclosure bar in 31 U.S.C. § 3730(e)(4)(A) requires a federal court to dismiss *qui tam* actions if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in one of three specified channels, including certain government hearings or investigations. The panel, reversing a district court decision, held that the IPR was not a specified channel and that the disclosures in the IPR were not substantially the same allegations as those brought in the *qui tam* action (*U.S. ex rel. Silbersher v. Valeant Pharm. Int’l, Inc.*).
- ***Federal Courts:** The Third Circuit created a circuit split as to the scope of a magistrate judge’s jurisdiction under the Federal Magistrates Act, 28 U.S.C. § 636. Disagreeing with the Fourth, Sixth, and Tenth Circuits, the court held that magistrate judges maintain jurisdiction to deny motions to proceed in forma pauperis (IFP) because such denials are non-dispositive pre-trial matters. The court reasoned that IFP motions do not appear on the § 636(b) list of matters that the statute carves out of magistrate judge jurisdiction. Acknowledging that § 636(b) is an illustrative list, not an exhaustive one, the court also looked to § 636(b)(1)(A) and (B), which allow magistrate judges to hear prisoner petitions challenging the conditions of their confinement and to rule on IFP motions that accompany those petitions. The court also found support in [Federal Rule of Civil Procedure 72\(b\)](#), which carves out “dispositive” matters from a magistrate judge’s jurisdiction (*Prater v. Dep’t of Corr.*).
- **Firearms:** A divided Fifth Circuit reversed the denial of an injunction against a [final rule](#) issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The final rule established criteria for determining when modifications to pistols (such as by attaching stabilizing braces) transformed the pistols into “rifles,” subjecting them to heightened manufacturing, selling, and transferring requirements under the [National Firearms Act of](#)

1934 and the [Gun Control Act of 1968](#). The court held, among other things, that ATF likely violated the Administrative Procedure Act’s [notice and comment requirement](#) because the final rule was not a “[logical outgrowth](#)” of the proposed rule (*Mock v. Garland*).

- **First Amendment (Speech):** A divided Seventh Circuit held that a nonprofit advocacy organization’s payment of cash bail is not expression protected by the [First Amendment right to free speech](#). The plaintiff organization challenged an Indiana law requiring charitable bail organizations to register with the state and prohibiting them from providing assistance to certain criminal defendants. The court held that paying bail is not inherently expressive because a reasonable observer would not understand the payments to express any message about the bail system. The court also held that law does not violate the [Fourteenth Amendment’s Equal Protection Clause](#) because it is rationally related to the State’s legitimate interest in regulating criminal defendants (*The Bail Project, Inc. v. Comm’r, Indiana Dep’t of Insurance*).
- **Health:** A divided Sixth Circuit panel declined to lift a district court’s stay of a preliminary injunction that would have blocked enforcement of a Kentucky law restricting gender-affirming surgeries, hormone therapy, and puberty blockers for transgender minors. Although the district court initially blocked the state law’s enforcement, it stayed the injunction’s effect in light of the circuit panel’s [recent emergency stay](#) of an injunction issued in a case involving a similar Tennessee law. (A prior edition of the *Congressional Court Watcher* [recaps](#) that case.) In a per curiam decision, the circuit panel majority acknowledged some differences between the Kentucky and Tennessee laws, but concluded that the factors that supported staying the preliminary injunction in the Tennessee case likewise supporting staying the injunction here (*Doe 1 v. Thornbury*).

- ***Immigration:** The First Circuit held that judicial venue for appellate review of a final order of removal is determined by the location of the administrative venue in which removal proceedings are commenced, absent any formal change in administrative venue. Under 8 U.S.C. § 1252(b)(2), a petition for review of a final order of removal must be filed with the court of appeals for the circuit within which “the immigration judge completed the proceedings.” Removal proceedings commence with a filing with an administrative control immigration court, but may include a separate designated hearing location and remote hearings with participants in various locations. The First Circuit held that appellate review of the order of removal was appropriately filed with the First Circuit, as opposed to the Fifth Circuit, because the proceedings were initiated in the Boston immigration court, even though the Immigration Judge was physically present in Fort Worth, TX. Acknowledging that other circuits have reached a variety of conflicting results, the First Circuit held that an immigration judge completes the removal proceedings at the administrative venue of the proceedings (*Bazile v. Garland*).
- **Immigration:** The Immigration and Nationality Act allows a noncitizen to appeal to a U.S. circuit court for review of a “final” order of removal within 30 days of the order. The Tenth Circuit held, among other things, that the Department of Homeland Security’s reinstatement of a noncitizen’s prior removal order was not a final order starting the 30 days when there was a pending proceeding to determine whether the noncitizen was eligible for certain protections from removal. According to the court, the reinstated removal order becomes final upon the conclusion of those proceedings before an immigration judge and any administrative appeal to the Board of Immigration Appeals (*Arostegui-Maldonado v. Garland*).
- ***Labor & Employment:** The Ninth Circuit held in part that Section 406(a)(1)(C) of the [Employee Retirement Income Security Act \(ERISA\)](#) establishes a per se rule that classifies even arm’s-length service transactions between a plan and a party in interest as “prohibited transactions” which may be permissible under [certain statutory exemptions](#). The Ninth Circuit declined to follow the reasoning of the Third Circuit, which has held that a plaintiff must plead factual allegations that support an element of intent to benefit a party in interest in order to state a prohibited-transaction claim. The Ninth Circuit also rejected a similarly limited reading of the scope of Section 406(a)(1)(C) adopted by the Seventh Circuit (*Bugielski v. AT&T Servs., Inc.*).
- **Labor & Employment:** A divided D.C. Circuit held, among other things, that the jurisdictional grant to the Department of Labor’s Mine Safety and Health Administration (MSHA) under the Federal Mine Safety and Health Amendments Act (Mine Act) was ambiguous and remanded the case for the Secretary of Labor to interpret the ambiguous language. The Mine Act gives MSHA jurisdiction over “coal or other [mine\[s\]](#).” The court held that part of the statutory definition of “mines” is ambiguous as to whether MSHA has authority over an independent trucking company that provides hauling services to mining companies when its trucks are off a client’s extraction site (*Sec’y of Labor v. KC Transp.*).
- **Telecommunications:** The Fifth Circuit affirmed a district court’s entry of a permanent injunction against enforcement of municipal design regulations limiting the construction of new utility poles to support 5G wireless services. The circuit panel held that the city’s restrictions were preempted by the [Federal Telecommunications Act](#). The panel further held that a plaintiff may seek declaratory and injunctive relief under the Act, distinguishing circuit precedent providing that the relevant provision of the Act does not establish a private right of action enforceable for damages under 42 U.S.C. § 1983 (*Crown Castle Fiber, L.L.C. v. City of Pasadena*).

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