

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (January 16–January 21, 2024)

January 23, 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.

Decisions of the Supreme Court

The Supreme Court did not issue any opinions or agree to hear any new cases last week.

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.

- **Bankruptcy:** In a case arising from cryptocurrency exchange company FTX’s Chapter 11 bankruptcy proceedings, the Third Circuit decided that the bankruptcy court improperly denied the U.S. Trustee’s motion to appoint an examiner to investigate FTX management’s role in the multi-billion-dollar company’s collapse. The circuit court held that [11 U.S.C. § 1104\(c\)\(2\)](#) imposes a nondiscretionary requirement on a bankruptcy court to appoint an examiner when requested by the U.S. Trustee or a party of interest

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when the debt's "total fixed, liquidated, unsecured debt" is more than \$5 million, as was the case here (*In re FTX Trading Ltd.*).

- **Bankruptcy:** The Fourth Circuit held that a provision of the Bankruptcy Code, [11 U.S.C. § 523\(a\)\(6\)](#), which makes debts arising from the "willful and malicious injury" of another nondischargeable in bankruptcy proceedings, applied to the principal owed by a debtor under a pre-suit settlement agreement with a creditor he had assaulted. However, the court held that interest accrued from late payments and attorney's fees incurred from enforcing the settlement agreement were dischargeable (*In re Hilgartner*).
- **Criminal Law & Procedure:** The Eleventh Circuit rejected constitutional challenges to [18 U.S.C. § 231\(a\)\(3\)](#), which makes it a crime to impede law enforcement officers who are lawfully carrying out their official duties during a civil disorder affecting interstate commerce. Affirming the defendant's conviction under Section 231(a)(3) for smashing the window of a police car blocking protestors from walking onto an interstate highway, the court held that (1) Congress did not exceed its [Commerce Clause](#) authority in enacting the law; (2) Section 231(a)(3) was not facially [overbroad](#), as it did not cover a substantial amount of expressive conduct protected by the First Amendment; (3) the statute was not a constitutionally impermissible content-based regulation of speech under the First Amendment; and (4) the law was not unconstitutionally vague under the Fifth Amendment's Due Process Clause (*United States v. Pugh*).
- **Immigration:** The Fifth Circuit agreed to rehear en banc a case involving a preliminary injunction directing the State of Texas to halt the installation of a floating barrier in the Rio Grande, which is intended to deter unauthorized immigration, and to reposition the barrier onto the Texas-side riverbank. The Fifth Circuit vacated the panel's opinion, which this [Congressional Court Watcher](#) previously discussed, and ordered the case to be reheard en banc with oral argument to be scheduled for a future date (*United States v. Abbott*).
- **Firearms:** A divided Third Circuit held that Pennsylvania's effective ban on 18- to 20-year-olds carrying firearms outside the home during a state of emergency violated the Second Amendment, remanding the case with instructions to enjoin enforcement of the restrictions. In deciding whether the state ban violated the Second Amendment, the court applied the framework set out by the Supreme Court in *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, which asks whether the plain text of the [Second Amendment](#) covers the regulated conduct and, if so, whether the government can point to a historical analogue of the challenged firearm restriction. The circuit panel majority determined that the relevant historical period for identifying analogues under *Bruen* is the time of the Second Amendment's ratification in 1791, not when the Second Amendment's protections were made applicable to the states through the Fourteenth Amendment's ratification in 1868. The panel majority held that 18- to 20-year-olds were presumptively among "the People" understood to be protected by the Second Amendment and that the state did not identify a sufficient Founding-era analogue to the challenged Pennsylvania law (*Lara v. Comm'r Penn. State Police*).
- **Maritime Law:** The Ninth Circuit upheld the convictions of two defendants for violating the [Maritime Drug Law Enforcement Act](#) (MDLEA) after determining that the statute's rule for when a vessel can be considered stateless does not run afoul of international law. The MDLEA applies to a vessel outside the territorial jurisdiction of the United States if the vessel is "without nationality." Under [46 U.S.C. § 70502\(d\)\(1\)\(C\)](#), a vessel is without nationality when the individual controlling it claims registry with a nation but "the claimed nation of registry does not affirmatively and unequivocally assert that the vessel

is of its nationality.” The defendants argued that Congress’s constitutional authority to “define and punish . . . Felonies committed on the high Seas” is limited by international law principles, and that Section 70502(d)(1)(c) conflicts with international law as to when a vessel may be treated as stateless. The circuit panel was unable to identify any tenets of international law that clearly affirmed or rejected the authority of the United States to exercise jurisdiction over the defendants’ vessels. The panel therefore concluded the statute was not inconsistent with international law and upheld the defendants’ convictions (*United States v. Marin*).

- **Separation of Powers:** The Fifth Circuit held that the for-cause removal protections that insulate the Consumer Product Safety Commission (CPSC) from presidential control do not violate the separation of powers doctrine. The plaintiffs filed suit challenging a regulation recently promulgated by the CPSC and argued that it is invalid because the CPSC is unconstitutionally structured due to the Commission’s [for-cause removal protections](#). The Fifth Circuit rejected that argument and held, consistent with the Supreme Court’s decision in *Humphrey’s Executor v. United States*, that for-cause removal protections for an independent agency headed by a multimember board are constitutionally permissible. Although the circuit panel indicated that recent Supreme Court decisions appear to stray from the Court’s reasoning in *Humphrey’s*, the panel declined to read the Supreme Court’s decision in *Seila Law LLC v. CFPB* as overruling *Humphrey’s*, and it reversed the district court’s holding that the CPSC’s for-cause removal protections were unconstitutional (*Consumers’ Rsch. v. CPSC*).
- **Torts:** The Third Circuit held that the United States was immune from suit by a plaintiff whose cash property was seized by U.S. customs officials and who sought damages arising from his inability to use the funds during the period of confiscation. U.S. customs officials had seized cash from the plaintiff when he returned from a foreign trip under the initial belief it came from illegal activity. The government returned the money to the plaintiff with interest two-and-a-half years later. The plaintiff alleged that the confiscation of his life savings prevented him from doing business and rendered him homeless. The Third Circuit affirmed the lower court’s decision to dismiss the claim on sovereign immunity grounds. Although a Federal Tort Claims Act provision, [28 U.S.C. § 2680\(c\)](#), permits suit against customs officials for the “loss . . . of property,” the court held that this exception allows suit when property is injured or lost by customs officials but not suits based on personal injuries caused by the owner’s inability to use the property while confiscated (*Bah v. United States*).

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