



Short Circuit: A Roundup of Recent Federal Court Decisions

John Ross

July 31st, 2020

Please enjoy the latest edition of [Short Circuit](#), a weekly feature from the Institute for Justice.

Slaughterhouses are the weak link in the nation's meat supply chain: Just over 50 facilities account for 98% of all cattle slaughtering in the United States. So when the coronavirus began to ravage meatpacking plants, beef and pork went scarce. To prevent future shortages, Congress is considering the PRIME Act, which would ease restrictions on local, small-scale slaughterhouses. Over at [Forbes.com](#), IJ's Nick Sibilla has more.

New on the [Short Circuit](#) podcast: Special guest Christina Martin of the Pacific Legal Foundation—a recent victor at the [Michigan Supreme Court](#)—joins the panel to talk tax forfeitures and excessive fines.

- Barge drops anchor in the Long Island Sound while being towed by a tugboat. The anchor damages an undersea cable, causing oil spillage that costs New York's Power Authority \$10 mil to clean up. Can the Authority recover from the owner of the barge and tugboat? The case should not have been dismissed, says the [Second Circuit](#); the cable does indeed count as a "facility," as defined by the relevant federal statute.
- To incentivize companies to relocate to New Jersey, the Garden State's "Business Employment Incentive Program" would sometimes grant them millions of dollars in unencumbered cash. IRS to program beneficiary: That \$56 mil New Jersey gave you between 2010 and 2013? That's taxable income. Tax court: No, the grants were merely capital contributions. [Third Circuit](#): It's taxable income.
- In 2015, at the request of the mayor, a local business group that organizes Natchitoches, La.'s annual Christmas parade (a 100-year-old tradition) bars the display of the Confederate battle flag, which an organization of male descendants of Confederate soldiers had paraded with many times over the years. [Fifth Circuit](#): Can't sue the city over that. Concurrence: If you can't censor the Nazis in Skokie, you can't censor this. But plaintiffs didn't sue the right people in time or develop the right arguments.
- After two trials and a 2016 trip to the [Fifth Circuit](#), ExxonMobil is slapped with a \$20 mil penalty for thousands of Clean Air Act violations at its massive Baytown, Tex. complex. But wait! Did the citizens who filed suit have standing? [Fifth Circuit](#): The case must go back to the district court to determine whether each individual violation is fairly traceable to plaintiffs' injuries. Partial dissent: We should take this thing en banc to sort out the mess that is our precedent, which is just one *ipse dixit* after the next.

- After doctor finds 33 fractures in 3-month-old's ribs, legs, and shoulder blade, the baby is taken from his parents for several years. His brother is born the following year, and he is taken as well. Yikes! The older brother has a bone disease, and a Tennessee court orders both boys returned. Can the parents sue the doctor for failing to test for or tell anyone about the possibility of such a disease? The Sixth Circuit says no; we've never held that doctors can be liable for making false or reckless statements in support of a child removal (and don't so hold here), so qualified immunity. (The social workers and the hospital are off the hook, too.)
- Persons who reenter the U.S. after previously having been deported can seek "withholding of removal." But are they entitled to a bond hearing while that withholding-of-removal proceeding winds its way through the courts? Sixth Circuit: We join with the Third and Ninth Circuits—and break with the Second and Fourth—in saying no. Partial dissent: Statutorily, that's correct, but the length of this detainee's detention (28 months and counting) violates due process.
- Allegation: A series of medical staffers at Michigan correctional facilities decline to order diagnostics or provide treatment for inmate with multiple sclerosis despite his repeated requests, relapses. His cognitive function declines to the point where he consumes his own feces and sucks his thumbs. (He dies in a nursing home.) Sixth Circuit: Most of his estate's claims were filed too late, but (over a dissent) a pair of physician's assistants might have been deliberately indifferent to his medical needs.
- Nonprofit devoted to defending campus speech sues administrators at the University of Illinois at Urbana-Champaign, alleging that various campus policies violate the First Amendment. Seventh Circuit: No standing to challenge two of the policies, and the challenge to the third—a requirement that speakers receive prior approval before distributing campaign literature—is moot because the University repealed that policy. Dissent: I agree on the first two policies, but the third wasn't repealed until after this litigation began and could be reinstated at any time; that claim should move forward.
- Oklahoma and the Creek Nation are not the only ones at odds over 19th-century treaties establishing reservations and the creeping boundaries of the United States. A dispute between Hobart, Wisc. officials and the Oneida Nation came to a head after village officials fined the Nation for holding its annual Big Apple Fest without a village permit. The Seventh Circuit concludes that it is indeed Oneida Nation land.
- Allegation: After actress Ashley Judd rebuffed advances by disgraced Hollywood producer Harvey Weinstein, Weinstein told director Peter Jackson that she was "a nightmare to work with," leading to her losing a major role in the *Lord of the Rings* trilogy. Judd only learns of this years later after Weinstein's harassment, when Jackson gives an interview recounting Weinstein's statements. Ninth Circuit: And under California law, that is actionable sexual harassment. Case un-dismissed.
- Allegation: Prescription pet food, which is substantially more expensive than regular pet food and unavailable for purchase without a veterinarian's say-so, is a big con. There's nothing medicinal in the food, and, since the 1980s, pet food companies have supplied vets with prescription pads as a marketing effort. Ninth Circuit (over a dissent): Which

might violate California consumer protection law. The case should not have been dismissed.

- Are Arizona State University's disciplinary procedures for sexual misconduct cases biased against men, in violation of Title IX? Ninth Circuit: This Ph.D. student, accused of sexual misconduct by an on-again, off-again romantic partner will get to find out.
- Ninth Circuit: Criminal stalking is categorically a crime involving moral turpitude (CIMT), for which a green-card holder can be deported. Concurrence: This is the right outcome under our CIMT case law. Also, our case law is "dumb, dumb, dumb."
- Life protip: Don't shine laser beams at police aircraft; they have equipment that can determine the source of the laser beam. Ninth Circuit law protip: Don't violate the Fourth Amendment when you investigate the source of the laser beam, or we will have to throw out your case.
- Okemah, Okla. stabbing victim tells police his assailant fled in a big, black Chevy truck with a trailer. Officers pull over a dark-colored Chevy truck sans trailer. When the driver doesn't show his hands, one cop points a gun, and the driver drives away. The cop fires half a dozen times on the fleeing truck, and the truck runs into a ditch. Police do not render aid. The man, who had nothing to do with the stabbing, dies. District court: The cop was in no danger when he fired the shots; his actions were objectively unreasonable. Tenth Circuit (over a dissent): Just so. No qualified immunity.
- As Denver, Colo. SWAT team arrives at controlled buy (or, more technically, a "reverse buy-bust"), the suspect draws a pistol. One second later, an officer shoots the suspect, killing him. Allegation: The suspect was trying to place his firearm on the ground and raise his hands in surrender. Tenth Circuit: Even if that were true, the officer couldn't reasonably have known it in the one second between seeing the firearm and firing.
- And in en banc news, the D.C. Circuit will reconsider its decision that the prosecution of former National Security Adviser Michael Flynn, who pled guilty to making false statements, must be dismissed because the feds now wish to dismiss it. (We talked about the now-vacated panel opinion on the podcast with the Cato Institute's Clark Neily.) The Sixth Circuit, however, will not reconsider its decision permitting Tennessee to suspend indigent driver's licenses over failure to pay traffic debt. Chief Judge Cole dissents. (We also dissent.)

Agencies within the Dep't of Homeland Security seized over \$2 bil in currency from travelers at airports nationwide between 2000 and 2016, \$500 mil of which was taken because of missing paperwork. So finds an Institute for Justice report on DHS' use of civil forfeiture at airports. The study is the first to use data from the Treasury Dep't's forfeiture database, the Seized Assets and Case Tracking System or SEACATS, which IJ fought for over four years to obtain. The report concludes that DHS airport currency seizures put innocent people's property at risk without appearing to advance serious crime-fighting objectives. To ensure innocent Americans cease losing property unjustly, Congress must reform civil forfeiture. Read more about it in *The Washington Post*.