

The Supreme Court Update - May 16, 2024

by Ian Blodger, Jessica M. Leano, and Brock Huebner

The Supreme Court of the United States issued three decisions today:

CFPB v. Community Financial Services Association of America, Limited, No. 22-448: This case involves a constitutional challenge to the federal Consumer Financial Protection Bureau (“CFPB” or “Bureau”), a consumer watchdog and financial regulator created by Congress in 2010 in the wake of the financial crisis. A group of trade associations challenged regulations issued by the CFPB on grounds that the Bureau’s funding mechanism violates the Appropriations Clause in Article I of the U.S. Constitution, which says that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” Congress authorized the Bureau to draw from the Federal Reserve System an amount that its Director deems “reasonably necessary to carry out” the Bureau’s duties, subject only to an inflation-adjusted cap. The Fifth Circuit agreed that the Bureau’s funding mechanism violates the Appropriations Clause. Today, in a 7-2 decision authored by Justice Thomas, the Court reversed, rejected the challenge to the CFPB, and held that “the statute that authorizes the Bureau to draw funds from the combined earnings of the Federal Reserve System is an ‘Appropriatio[n] made by Law.’” Justice Kagan authored a concurrence (joined by Justices Sotomayor, Kavanaugh, and Barrett), emphasizing that the Bureau’s funding mechanism is consistent with historical congressional practice. Justice Jackson authored a short separate concurrence. Justice Alito dissented (joined by Justice Gorsuch), criticizing the Court for “uphold[ing] a novel statutory scheme under which the powerful Consumer Financial Protection Bureau (CFPB) may bankroll its own agenda without any congressional control or oversight.”

View the [Court's decision](#).

Smith v. Spizzirri, No. 22-1218: This case involves Section 3 of the Federal Arbitration Act (“FAA”), which provides that when a dispute is subject to arbitration, the court “shall on application of one of the parties stay the trial of the action until” the arbitration has concluded. Delivery drivers filed suit in Arizona state court against operators of an on-

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demand delivery service, alleging violations of federal and state employment laws. Defendants removed the case to federal court and moved to compel arbitration and dismiss the suit. The drivers conceded the claims were arbitrable but argued that Section 3 required the district court to stay the action pending arbitration, not dismiss it entirely. The district court entered an order compelling arbitration and dismissing the case without prejudice. The Ninth Circuit affirmed, finding “the plain text of the FAA appears to mandate a stay,” but it was bound by Ninth Circuit precedent recognizing the district court’s “discretion to dismiss.” A concurrence asserted that the Ninth Circuit’s position was wrong and urged the Court to take up the question, “which it has sidestepped previously, and on which the courts of appeals are divided.” Today, in a 9-0 opinion authored by Justice Sotomayor, the Court reversed and remanded, holding that when a district court finds that a lawsuit involves an arbitrable dispute and a party requests a stay pending arbitration, Section 3 compels the court to issue a stay, and the court lacks discretion to dismiss the suit.

View the [Court's decision](#).

Harrow v. Department of Defense, No. 23-21: This case analyzes whether the deadline for appealing decisions of the Merit System Protections Board (“Board”) is subject to equitable exceptions. In 2013, Department of Defense employee Stuart Harrow filed a claim to avoid being placed on a six-day furlough. His case was delayed for years while the Board lacked a quorum necessary to resolve cases. When the Board finally denied Harrow’s claim in 2022, it sent notice to Harrow through an outdated email address. As a result, Harrow’s appeal to the Federal Circuit was untimely under 5 U.S.C. § 7703(b)(1), which requires an appeal “within 60 days” of the Board’s final order. The Federal Circuit dismissed the appeal after concluding the 60-day statutory deadline is a “jurisdictional requirement,” and “not subject to equitable tolling.” Today, in a unanimous decision authored by Justice Kagan, the Court reversed. The Court determined that 5 U.S.C. § 7703(b)(1) lacks the clear statement required to make the filing deadline a jurisdictional requirement and held that the deadline may be set aside for equitable reasons.

View the [Court's decision](#).