

THE DAILY DOCKET

A newsletter by Reuters® and Westlaw®



By **Diana Novak Jones** and **Mike Scarcella**



Dec. 7, 2022

Good morning. Today the **U.S. Supreme Court** takes up one of its most anticipated cases, which could dramatically expand state legislatures' power over federal elections. Plus, **Sam Bankman-Fried** has picked his lawyer, and 50,000 lawsuits alleging **Zantac** causes cancer are knocked out. Let's get going.

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[High court weighs landmark state elections case](#)



REUTERS/Jonathan Ernst

The **U.S. Supreme Court** takes up one of the most closely-watched cases of the term this morning – a matter that concerns state legislatures' power over federal elections, writes **Andrew Chung**.

The case is a Republican-backed appeal of a decision by North Carolina's top court to throw out a map of the state's congressional

districts approved by the Republican-controlled state legislature. The Republicans rely on a legal theory called the "independent state legislature" doctrine that holds the U.S. Constitution gives state legislatures, and not state courts, power over election rules and electoral district maps.

The theory is gaining traction in conservative legal circles and, if endorsed by the U.S. Supreme Court, would vastly increase politicians' control over how elections are conducted. And it appears a few of the justices could back it: When the court declined to block lower court rulings adopting an electoral map replacing the Republican-drafted one in North Carolina, **Justice Samuel Alito** [dissented](#) alongside **Justices Clarence Thomas** and **Neil Gorsuch**.

The Republicans appealing are represented by **David Thompson** of **Cooper & Kirk**. On the other side is **Neal Katyal** of **Hogan Lovells**, who is representing voting groups like **Common Cause**. **Munger Tolles' Donald Verrilli** is representing the state respondents. **Solicitor General Elizabeth Prelogar** will argue for the Biden administration, which is also opposing the doctrine.



More top news

> [*Trump Organization found guilty of tax fraud scheme*](#)

> [*GSK, Pfizer, Sanofi fend off thousands of U.S. lawsuits over alleged Zantac cancer link*](#)

> [*Apple is sued by women who say AirTag lets stalkers track victims*](#)

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Industry buzz

- **FTX** founder and former **CEO Sam Bankman-Fried** has hired former federal prosecutor **Mark S. Cohen** of **Cohen & Gresser** to represent him. Cohen recently defended **Ghislaine Maxwell** in her sex trafficking trial. **Caroline Ellison**, head of FTX's now-defunct trading affiliate **Alameda Research**, hired **WilmerHale** to represent her. ([Reuters](#))
- U.S. law firms saw decreased demand in 2022 measured against "aberrational performance" in 2021, with the biggest firms feeling the brunt of the decline, according to a new report that said bankruptcy, regulatory and litigation practices may see growth in 2023. ([Reuters](#))
- **Kevin Chambers**, [who led](#) the Biden DOJ's COVID-19 fraud enforcement team, is returning to **Latham** as a white-collar and investigations partner. ([Reuters](#))

Number of the day:



REUTERS/Hannah McKay/Andrew Kelly

That's the number of lenders, among 10, to **Revlon** that appear on the verge of returning payouts to **Citigroup** that it accidentally made in wire transfers to them. Citigroup [mistakenly used](#) its own money in 2020 to prematurely pay off a \$894 million loan owed by billionaire **Ronald Perelman's** now-bankrupt cosmetics company. Some recipients returned the payouts, which Citigroup blamed on human error, while others refused. A **2nd Circuit** panel in September said the lenders [did not deserve](#) a "huge windfall," overturning a district judge's ruling that the lenders could keep the payouts. [***Other lenders who have not returned the payouts said they were making "substantial progress" toward resolution.***](#)



Columnist spotlight: [**Alston & Bird's alleged conflict may be 'time bomb' in ex-Cognizant GC's bribery trial**](#)

A New Jersey federal judge refused last week to countenance what he called a "backdoor" attempt by the former general counsel of **Cognizant Technology Solutions Corp** to oust **Alston & Bird** from representing the company as federal prosecutors prepare for a March 2023 bribery trial against the onetime top lawyer. But **U.S. District Judge Kevin McNulty** of Newark, New Jersey, left open the possibility that the ex-Cognizant GC, **Steven Schwartz**, can nevertheless ask witnesses about an hours-long meeting he attended with an Alston & Bird partner who was subsequently

retained by Cognizant. **Alison Frankel** [says](#) this sticky wicket “highlights the unforeseen pitfalls that can develop when prosecutors in corporate crime cases rely on cooperation from defendants’ former employers.”

Check out other recent pieces from all our columnists: [Alison Frankel](#), [Jenna Greene](#) and [Hassan Kanu](#).



"All they're doing is saying a lot of people own them. That doesn't meet the test."

*—4th Circuit Judge Paul Niemeyer, who said he didn't believe a group of Maryland residents who challenged their state's ban on so-called assault weapons had met the new standard for judging state gun laws set by the **U.S. Supreme Court** in its June ruling expanding gun rights. In the case, *New York State Rifle & Pistol Association Inc v. Bruen*, the high court found the Second Amendment of the U.S. Constitution protects an individual's right to carry a handgun in public for self-defense. Niemeyer, who heard the case as part of a panel, said the rule that the case created concerned whether the gun in question was commonly used lawfully for self defense, and [the residents had not presented evidence that that was true for the banned rifles.](#)*



Video: [Fast Take – Trump Organization found guilty of tax fraud](#)



Patterson Belknap litigator **Harry Sandick** assesses the jury's guilty verdicts on all 17 counts.

Coming up today

- **Ramesh "Sunny" Balwani**, former **Theranos** president, will be sentenced for defrauding investors in the blood testing startup once led by **Elizabeth Holmes** and also patients who received flawed tests. Federal prosecutors, including assistant U.S. attorney **Robert Leach**, [last week asked U.S. District Judge Edward Davila](#) in San Jose to sentence Balwani to 15 years in prison. Balwani's lawyers at **Orrick** countered that probation is sufficient. The defense cited Balwani's investment losses in a company once valued at \$9 billion and said he never sought the "fame or media attention" that Holmes attracted as Theranos' public face. Davila [sentenced Holmes](#) in November to more than 11 years in prison for her role in the scheme. She is appealing her conviction and sentence.
- **D.C. Circuit Judges Sri Srinivasan, Greg Katsas and Judith Rogers** will hear arguments in **Donald Trump's** appeal of [a lower court ruling](#) that allowed lawsuits accusing him of inciting the Jan. 6, 2021, riots at the **U.S. Capitol** to proceed. In February, **U.S. District Judge Amit Mehta** rejected Trump's argument that he is immune from three lawsuits by Democratic members of Congress and two police officers, finding Trump's fiery speech before the Capitol attack was not within the scope of his official presidential duties. **Jesse Binnall** will argue for Trump, and **Joseph Sellers** of **Cohen Milstein** will advocate for plaintiffs.
- A federal appeals court in New Orleans court will consider whether to bar the Biden administration from using Obama-

era values for calculating climate change costs in government decisions. The **5th Circuit** in March [put on hold an injunction](#) issued by a lower-court judge at the request of 10 Republican state attorneys general until it could hear arguments on the merits in the case. The U.S. government appealed a preliminary injunction that had temporarily blocked it from using a value of about \$50 per ton as the "social cost of greenhouse gasses." **Circuit Judges Jacques Wiener Jr, Stephen Higginson and Cory Wilson** will hear the case.

- The Cincinnati-based **6th Circuit** will hear an appeal by Oklahoma, West Virginia, Louisiana and others of a lower court judge's decision to dismiss a lawsuit challenging the federal Horseracing Integrity and Safety Act, a law designed to make horse racing safer by creating and enforcing national rules governing the use of drugs and the treatment of animals. The **5th Circuit** [last month declared](#) the law unconstitutional. **U.S. Senate Minority Leader Mitch McConnell** is [pushing for a legislative fix](#) to the law.

Court calendars are subject to last-minute docket changes.

In the courts

- The **6th Circuit** [upheld a \\$40 million verdict](#) for a cancer survivor who sued **E.I. du Pont de Nemours and Co** after years of exposure to a toxic chemical that it manufactured. The company and its attorneys from **Squire Patton Boggs** and **Ice Miller** argued a settlement reached in 2005 shouldn't have been used to limit it from challenging every instance where an individual may have developed cancer after low level exposure, but the court said DuPont could not challenge the verdict. ([Reuters](#))
- At oral arguments, the **U.S. Supreme Court** appeared unlikely to prevent the **Justice Department** from dismissing whistleblower lawsuits filed under the **False Claims Act** in instances in which the government initially declines to exercise its right to take over the cases. But some of the justices – including **Justice Samuel Alito** – asked whether the department must first give a reason before tossing a case without a whistleblower's consent. ([Reuters](#))
- Some restaurants will face "bankruptcy-level litigation" if a Biden administration [rule](#) requiring them to track the amount of time workers spend on non-tipped work is not blocked, an attorney for a restaurant group told the **5th Circuit**. The

lawyer, **Paul DeCamp** of **Epstein Becker**, argued the rule exposes restaurants to class actions, while the **DOJ** countered that the compliance costs of the rule average out to 10 minutes of work per business each week. ([Reuters](#))

- Several **U.S. Supreme Court** justices seemed skeptical of whether bankruptcy can be used to wipe out debts incurred through fraud even in cases in which an individual declaring bankruptcy was not the one who committed the fraud. California resident **Kate Bartenwerfer**, who is represented by **Sarah Harris** and **Lisa Blatt** of **Williams & Connolly**, asked the high court to overturn a **9th Circuit** ruling that said [she could not use bankruptcy to escape liability](#) stemming from fraudulent omissions her husband made in selling a house regardless of whether she knew about it. ([Reuters](#))
- **U.S. District Judge John Bates** in Washington, D.C. [dismissed a lawsuit](#) brought against Saudi Arabia's crown prince, **Mohammed bin Salman**, in the killing of journalist **Jamal Khashoggi** after the Biden administration argued he [had immunity](#) as the designated head of state. The court ruled against **Hatice Cengiz**, Khashoggi's fiancée, who had filed a wrongful death lawsuit against bin Salman. ([Reuters](#))
- **Apple** fended off a patent and antitrust lawsuit from email app maker **Blix** for a fourth time, after being accused of copying Blix's technology for its single sign-on system and stifling competition. The **Federal Circuit** affirmed a Delaware federal court's [order dismissing](#) the case. ([Reuters](#))

Industry moves

- **White & Case** added **Ian Ivory** as a London-based M&A partner from **Bryan Cave**, where he was co-leader of the global private equity practice. ([Reuters](#))
- **McDermott** added litigation partner **James Durkin** in Chicago. He was previously an assistant U.S. attorney in the **Northern District of Illinois**. ([Reuters](#))
- **Wilson Sonsini** said **Jess Cheng** joined the firm's New York office as a corporate partner in the fintech and financial services group. She previously was senior counsel in the monetary affairs and payment systems section of the **Federal Reserve** in D.C. ([Wilson Sonsini](#))

- **King & Spalding** hired **Carla Christofferson** as a Los Angeles-based trial and disputes partner. She previously was chief legal officer at engineering and construction company AECOM. ([King & Spalding](#))
- **Jones Day** added securities partner **David Peavler** in the firm's Dallas and D.C. offices. Peavler previously was director of the SEC's regional office in Fort Worth. ([Jones Day](#))

Lawyer speak: High-tech, high-risk: potential pitfalls from remote employee monitoring

The COVID-19 pandemic made working from home mainstream, and more than two years later, it seems to be here to stay for much of the workforce. Employers may look to high-tech tools to monitor their remote employees' productivity, but with the high tech monitoring tools come some unique risks, write **Melissa Kelly** and **Gregory Abrams** of **Tucker Ellis**. [Here's what they say employers should know before using these tools.](#)



Correction: The Daily Docket's Industry Moves section on Dec. 6 misidentified the first name of Littler's Nashville office managing shareholder Joycelyn Stevenson.

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Diana Novak Jones
diana.jones2@thomsonreuters.com