

# Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Nov. 8–Nov. 14, 2021)

November 15, 2021

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 the 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 of the 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 contact the authors to subscribe to the *CRS Legal Update* newsletter and receive regular notifications of new products published by CRS attorneys.

## Decisions of the Supreme Court

No Supreme Court opinions were issued this past week, and no new cases were added to the Court’s docket.

## Decisions of the U.S. Courts of Appeals

- **Arbitration:** Section 4 of the Federal Arbitration Act (FAA), 9 U.S.C. § 4, requires federal courts to enforce arbitration agreements when they have subject-matter jurisdiction over the underlying “controversy between the parties.” Interpreting this phrase in the context of federal diversity jurisdiction, the Fifth Circuit ruled that Section 4’s plain text normally requires courts to consider only the diversity in citizenship between the parties disputing enforcement of the arbitration agreement, and not whether there is complete diversity among parties in any related litigation (*ADT, L.L.C. v. Richmond*).

Congressional Research Service

<https://crsreports.congress.gov>

LSB10657

- **Criminal Law & Procedure:** Under 18 U.S.C. § 751(a), it is a criminal offense to escape or attempt to escape from custody when placed there “by virtue of” an arrest or conviction. The Eighth Circuit upheld a defendant’s conviction under § 751(a) for escaping a residential reentry center while under supervised release following conviction for another crime, even though the defendant’s placement in the reentry center was partially based on concern that he would be homeless upon release from prison. The court held that a defendant’s conviction needs only to be a cause of his placement into custody, and not the exclusive reason (*United States v. Porter*).
- **Criminal Law & Procedure:** A provision in the federal criminal forfeiture statute, 18 U.S.C. § 982(a)(6)(A)(ii), authorizes the confiscation of property from a defendant convicted of specified crimes, when that property “is derived from or traceable to the proceeds obtained” from the covered offense, “directly or indirectly.” The Ninth Circuit affirmed a forfeiture order against a defendant convicted of offense arising from a visa fraud scheme, concluding that the phrase “proceeds obtained” in the context of the forfeiture statute refers to receipts deriving from the commission of the offense, not exclusively profits or pecuniary gain (*United States v. Prasad*).
- **Employee Benefits:** The Employee Retirement Income Security Act (ERISA) establishes a comprehensive federal regulatory regime for private-sector employee benefit plans, including claims review. Evaluating whether a health insurance plan improperly withheld medical documentation from a claimant as part of the claims review process, the First Circuit held that under ERISA regulations, “information relevant to the claimant’s claim for benefits” is not limited to material considered by the plan when making an initial benefit determination, but includes documents produced during the pendency of the administrative appeal. The court also held that to give full and fair review in the appeal of an adverse benefit determination, the plan must give the claimant a chance to respond to the information provided, and take into account any new submissions made by the claimant prior to making a final determination on the appeal (*Jette v. United of Omaha Life Insurance Co.*).
- **Environmental Law:** In 2016, the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) jointly issued a rule setting greenhouse gas emissions and fuel efficiency standards for medium- and heavy-duty vehicles, which included requirements for trailers. A D.C. Circuit panel unanimously held that EPA cannot regulate trailers under Section 202(a) of the Clean Air Act because trailers are not “self-propelled” motor vehicles. A majority of the panel also held that NHTSA also does not have authority to regulate trailers under the Ten-in-Ten Fuel Economy Act, because trailers use no fuel (*Truck Trailer Manufacturers Association, Inc. v. EPA*).
- **Health:** Congress established the Organ Procurement and Transplantation Network to help implement the National Organ Transplant Act of 1984 (Transplant Act), including to help ensure distribution of organs to patients. In March 2021, a Network policy went into effect giving kidney allocation priority to candidates within 250 nautical miles of the donor’s hospital. The Eighth Circuit refused to halt implementation of the policy, after agreeing with the lower court that the policy was likely lawful under the Transplant Act and Administrative Procedure Act (*Adventist Health System v. U.S. Department of Health and Human Services*).
- **Intellectual Property:** In a patent dispute between Apple and Qualcomm, the Federal Circuit had held earlier this year that Apple did not meet the constitutional requirements for standing to seek review of decisions by the Patent Trial and Appeal Board. Although

such standing is not required to appear before an administrative agency, the requirement ripens when the matter moves to federal court, potentially leaving parties without an avenue for redress. A divided panel of the Federal Circuit last week dismissed a second challenge by Apple for the same reason, relying on principles of stare decisis (*Apple Inc. v. Qualcomm Inc.*).

- **International Law:** The Ninth Circuit held that the Foreign Sovereign Immunity Act (FSIA) does not provide immunity for a private company that claimed it acted as an agent for the Israeli government when it sent malware through plaintiffs' servers to mobile devices. The court held that the FSIA foreclosed the extension of immunity to those entities, like the defendant, that fall outside the FSIA's definition of a "foreign state" (*WhatsApp Inc. v. NSO Group Technologies Ltd.*).
- **Labor & Employment:** The Occupational Safety and Health Administration (OSHA) recently published an emergency temporary standard (ETS) directing employers with 100 or more workers to adopt a Coronavirus Disease 2019 (COVID-19) vaccination policy. The policy generally requires employees to either be vaccinated or, alternatively, undergo regular weekly testing and wear masks at work. Last week, a Fifth Circuit panel granted petitioners' emergency motion to stay enforcement of the ETS pending consideration of petitioners' motion for a permanent injunction. The panel held that the rule likely exceeded OSHA's statutory authority, concluding that the governing ETS statute—intended to address new "substances," "agents," or "new hazards" that expose workers to "grave danger"—was not intended to cover an airborne virus widely present in society and not life-threatening to most workers. The panel also concluded that OSHA had not demonstrated the order was an appropriate remedy, given that it had not issued a COVID-19-related ETS at any point earlier in the pandemic. The panel characterized the rule as both overinclusive (covering every industry no matter the comparative risk to the workforce) and underinclusive (not covering places with fewer than 100 workers). The panel also viewed constitutional considerations under the Commerce Clause and the nondelegation doctrine as making it unlikely that Congress intended OSHA to have the power to issue a workplace safety rule with public health implications affecting all members of society (*BST Holdings, L.L.C. v. OSHA*).
- **Postal Service:** The Postal Accountability and Enhancement Act directed the Postal Regulatory Commission to establish a rate-setting system for the prices of the U.S. Postal Service's market-dominant products. The Act generally barred the system from allowing rates to rise higher than the rate of inflation. The Act required the Commission to review the system after 10 years and, if the system did not meet specified objectives, the Commission was permitted to modify or adopt an alternative system. In 2020, the Commission issued an order establishing an alternative system that allows above-inflation rate increases for certain postal products. The D.C. Circuit denied petitions for review in consolidated cases challenging the order. The panel held, among other things, that the order's allowance of above-inflation rate increases for certain products was consistent with the Act and satisfied the Administrative Procedure Act's requirements for reasoned decisionmaking (*National Postal Policy Council v. Postal Regulatory Commission*).
- **Public Health:** The Second Circuit recently turned away requests to enjoin New York's emergency rule that certain health care workers be vaccinated against COVID-19, a requirement subject to limited exemptions for medical but not religious reasons. (The earlier circuit court decision is described in *last week's Congressional Court Watcher Sidebar*.) In a brief per curiam opinion, the court clarified that its earlier observation that employers might obtain a religious accommodation under the emergency rule did not

mean that the rule allowed those employees to continue working in their current positions unvaccinated. Rather, there may be circumstances where those seeking accommodation could be reassigned to perform functions that no longer place them under the rule's scope (*We The Patriots USA, Inc. v. Hochul; Dr. A. v. Hochul*).

- **Public Health:** The Food and Drug Administration (FDA) denied petitioner's application to market flavored e-cigarettes under the Family Smoking Prevention and Tobacco Control Act. A divided Sixth Circuit denied the petitioner's request to stay the FDA's order pending the court's review after the court concluded that the petitioner had not met its burden of showing a strong likelihood of success on the merits. The court determined the petitioner was unlikely to succeed in its Administrative Procedure Act claim that the FDA acted unreasonably in denying the application. The circuit court reached a different outcome than did the Fifth Circuit a few weeks ago (discussed in an [earlier Congressional Court Watcher Sidebar](#)) when it stayed the FDA's application denial for another e-cigarette company, pending its petition for review (*Breeze Smoke, LLC v. FDA*).
- **Separation of Powers:** A D.C. Circuit panel issued an administrative injunction preventing the National Archives and Records Administration and the Archivist of the United States from releasing records requested by the House Select Committee to Investigate the January 6th Attack on the United States Capitol, while the panel considers former President Trump's suit challenging the records' release. The panel also set an expedited briefing schedule for the matter, with oral arguments set for November 30, 2021. The panel observed that the administrative injunction is not a ruling on the merits, but an action to enable the court to retain jurisdiction after former President Trump's request for an injunction was denied by the district court. The key issues in the case—namely, whether at least some of the records are shielded from congressional access by executive privilege and whether the record request exceeds Congress's constitutional power—still await consideration by the D.C. Circuit (*Trump v. Thompson*).
- **Tax:** Certain payments made by railroad companies to employees are not considered "compensation" under the Railroad Taxation Act. Under 26 U.S.C. § 3231(e)(1)(iii), this includes amounts "paid specifically . . . for traveling or other bona fide and necessary expenses . . . incurred in the business of the employer." Splitting with another circuit, the Eleventh Circuit held that the exemption applies to relocation benefits paid to employees whose employers require them to move. The court further held that the plaintiff could seek a refund immediately for taxes paid for employees' moving expenses (*CSX Corporation v. United States*).
- **Voting:** A Montana district court had upheld Montana's primary ballot access scheme. The Ninth Circuit partially affirmed and partially reversed, ruling that the challenged provisions do not violate the right of association and the right to cast an effective vote under the First and Fourteenth Amendments. The statewide signature requirements, filing deadline, and geographic distribution requirements for signatories impose a minor rather than severe burden, allowing the scheme to serve Montana's important regulatory interests consistent with these rights. However, the circuit court held that the scheme's vote distribution requirement violates the "one person, one vote" principle in the Equal Protection Clause of the Fourteenth Amendment by establishing different burdens for signatures in equal-population districts (*Montana Green Party v. Jacobsen*).

## Author Information

Michael John Garcia  
Section Research Manager

Sanchitha Jayaram  
Assistant Director/ALD

---

## Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.