

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Nov. 22–Nov. 28, 2021)

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

Decisions of the Supreme Court

Last week, the Supreme Court issued its first decision in a case argued this term:

- **Environmental Law:** In a 9-0 decision, the Supreme Court dismissed Mississippi’s complaint against Tennessee in a dispute over an interstate underground aquifer that supplies water to the Memphis metropolitan area. Sustaining the decision of a special master, the Court held that the groundwater from the aquifer was subject to equitable apportionment between the states. In doing so, the Court extended to interstate aquifers the rule traditionally applied to interstate surface waters ([Mississippi v. Tennessee](#)).

The Court also added a new case to its docket:

- **Civil Procedure:** The Supreme Court granted certiorari in a case from the Fourth Circuit involving North Carolina state legislators’ attempt to intervene in a lawsuit to defend the state’s voter-identification law, which was already being defended by the state’s attorney

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general. (North Carolina law recognizes the legislators as state agents for purposes of defending challenged state statutes.) The Court is asked to review the standards and presumptions used by federal courts to consider a motion of intervention as of right by a state agent when a state official is already a defendant in the case (*Berger v. North Carolina State Conference of the NAACP*).

Decisions of the U.S. Courts of Appeals

- **Civil Rights:** To sustain an employment discrimination claim under the Americans with Disabilities Act or Age Discrimination in Employment Act, a worker generally must show, among other things, that his or her employer imposed an adverse employment action. The Third Circuit joined other circuits in holding that a termination notice constitutes an adverse action, even if the employer gives the worker time to find another position in the company, and regardless of whether that worker obtains another position (*Fowler v. AT&T, Inc.*).
- **Immigration:** Nonpermanent resident aliens subject to removal from the United States may be eligible for cancellation of removal if, among other things, they have been physically present in the country continuously for at least 10 years. The “stop-time” rule in 8 U.S.C. § 1229b(b)(1)(A) provides that the accrual of a period of continuous physical presence ends once an alien is served a Notice to Appear (NTA) initiating removal proceedings, but the Supreme Court has held that this rule is *not* triggered if an NTA does not specify the time and place of the initial proceeding. Joining the Seventh Circuit in issuing a precedential decision on the matter, the Second Circuit held that the stop-time rule exception for deficient NTAs does not retroactively apply to Orders to Show Cause, the pre-1997 charging documents that were the precursor to NTAs (*Jiang v. Garland*).
- **Criminal Law & Procedure:** 18 U.S.C. § 1001 generally outlaws materially false statements in matters within the jurisdiction of any branch of the federal government. In a case prompted by the defendant’s attempt to influence a lawsuit against entertainer Bill Cosby, the Third Circuit reversed a criminal defendant’s convictions under § 1001 and related statutes, and remanded to the district court with instructions to acquit. The defendant, who became fixated with the Cosby case, impersonated the plaintiff’s attorney to file an exhibit intended to discredit the plaintiff, but his fraudulent filing was soon discovered and struck from the docket. (Because the defendant was not an actual party to the proceeding, 18 U.S.C. § 1001(b)’s exception from liability for false statements made by parties to judicial proceedings was not at issue.) The circuit court held that the government failed to show that defendant’s fraudulent filing satisfied the materiality element necessary to sustain a conviction under § 1001, because no evidence was presented that the filing could have influenced a pertinent decision by the judge (*United States v. Johnson*).

- **Religion:** Under the Religious Freedom Restoration Act (RFRA), when government action substantially burdens a person's religious exercise, the action is valid only if the government shows the burden is (1) in furtherance of a compelling governmental interest and (2) the least restrictive means of furthering that interest. The Eleventh Circuit affirmed the convictions and sentences of three criminal defendants who unlawfully entered a Navy submarine base and defaced property as part of their religiously motivated opposition to nuclear weapons. The defendants claimed their prosecutions violated RFRA. The circuit court held, among other things, that the defendants did not offer a less restrictive alternative that would have accommodated their religious exercise while still protecting the government's compelling national security interest in uniformly barring persons from unlawfully entering a military base and damaging base assets (*United States v. Grady*).

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