

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Jan. 10–Jan. 16, 2022), Part 1

January 18, 2022

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 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.

(This week’s *Congressional Court Watcher* is divided into two parts because of the number of notable decisions issued over the past week. This Sidebar [Part 1] discusses Supreme Court activity during the week of January 10 to January 16, 2022, while a companion Sidebar, [Part 2](#), addresses decisions of the U.S. courts of appeals from that period.)

Decisions of the Supreme Court

Last week, the Supreme Court issued rulings in three cases for which it heard oral arguments, two of which addressed Coronavirus Disease 2019 (COVID-19) vaccination policies issued by the federal government:

- **Public Health:** The Supreme Court blocked implementation of a federal COVID-19 vaccine-or-testing policy directed at private employers with more than 100 workers, while separately allowing another federal vaccination policy targeting health care entities that receive Medicare/Medicaid funding to go into effect. The Court’s rulings concerned preliminary injunctions issued by district courts; litigation on the merits will continue in

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the lower courts.

In the first case, the Court (over the dissent of three Justices) concluded that plaintiffs were likely to succeed in their challenge to an Occupational Safety and Health Administration (OSHA) emergency temporary standard (ETS) issued in November 2021 that directs employers with 100 or more workers to adopt a COVID-19 vaccine-or-testing policy. The majority observed that while the governing statute gives OSHA the power to promulgate workplace safety standards, it does not authorize OSHA to issue broad public health measures. Characterizing the challenged standard as targeting risk of COVID-19 exposure generally, rather than occupation-related risk, the Court concluded the ETS exceeded OSHA's authority. Still, the majority suggested that a different COVID-19 policy, targeting specific workplace settings or occupations where COVID-19 poses a specific danger, might be permitted. Finally, the majority concluded that the balance of equities favored staying implementation of the ETS while plaintiffs' challenges proceeded (*National Federation of Independent Business v. OSHA*).

In the second case, the Court decided by a 5-4 vote to lift lower court stays that prevented implementation of a November 2001 interim rule by the Centers for Medicare and Medicaid Services. The interim rule generally requires certain types of health care entities participating in the Medicare and Medicaid programs to ensure staff are vaccinated against COVID-19 unless an individual is exempted for religious, medical, or other prescribed reasons. Here, the majority agreed with the federal government that the interim rule was a permissible exercise of the agency's statutory authority to take action deemed "necessary in the interest of the health and safety of individuals who are furnished services" by covered health care entities (*Biden v. Missouri*).

- **Veterans:** In an 8-1 decision, the Supreme Court rejected petitioner's argument that the Social Security Act's windfall elimination provision, 42 U.S.C. § 415(a)(7), did not apply to the Civil Service Retirement System pension he received as a former dual-status military technician in a state National Guard. While the windfall elimination provision has an exception for payments "based wholly on service as a member of a uniformed service," the Court held this exception did not apply to the pension received for petitioner's full-time, civil service employment with the National Guard (*Babcock v. Kijakazi*).

The Supreme Court also granted certiorari in eight cases this past week:

- **Bankruptcy:** On appeal from the Fourth Circuit, the Supreme Court is asked to resolve a circuit split on whether the Bankruptcy Judgeship Act of 2017 violates the uniformity requirements of the Constitution's Bankruptcy Clause by enabling higher disbursement fees to be imposed on certain debtors in Trustee districts than for equivalent debtors in Bankruptcy Administrator districts. These districts derive from federal law, which establishes dual bankruptcy administration programs: the Department of Justice's Trustee Program administers proceedings for most judicial districts, while the Judicial Conference's Bankruptcy Administrator Program administers those for the remaining districts (*Siegel v. Fitzgerald*).
- **Civil Procedure:** The Supreme Court is asked to consider an appeal from the Eleventh Circuit as to whether Federal Rule of Civil Procedure 60(b) governs motions for reopening cases when the petitioner claims the district court's judgment was based on "legal error." Rule 60(b) permits a court to grant relief from a final judgment, order, or proceeding on account of "mistake" or other enumerated reasons, and establishes deadlines for motions seeking such relief (*Kemp v. United States*).

- **Civil Rights:** On appeal from the Ninth Circuit, the Supreme Court is asked to resolve a split among lower courts regarding whether a civil claim may be brought under 42 U.S.C. § 1983 against a state law enforcement officer who failed to provide a criminal suspect, whose self-incriminating statements were later used against him in criminal proceedings, with *Miranda* warnings (*Vega v. Tekoh*).
- **Civil Rights:** The Court granted certiorari in a case from the Eleventh Circuit, where it is asked whether a state prisoner's constitutional challenge to the method of his planned execution must be brought as a civil rights action under 42 U.S.C. § 1983, or instead as a petition for a writ of habeas corpus under 28 U.S.C. § 2254 (*Nance v. Ward*).
- **Criminal Law & Procedure:** The Court agreed to review a Sixth Circuit decision involving habeas-related claims brought by a prison inmate, and is asked to consider (1) whether courts may rely on the All Writs Act to order the transport of a state prisoner for reasons not set forth under the federal habeas statute, 28 U.S.C. § 2241; and (2) prior to the granting of an order allowing a habeas petitioner to develop evidence, whether the court must assess if the evidence would assist the petitioner in proving his claim for relief (*Shoop v. Twyford*).
- **Labor & Employment:** The Supreme Court agreed to review a Ninth Circuit case concerning the validity of a Washington state workers' compensation law, which applies exclusively to federal employees and contractors at a decommissioned federal nuclear production site in the state. The Court is asked to consider whether the law is barred by constitutional principles of intergovernmental immunity, or is instead authorized by 40 U.S.C. § 3172(a), which permits state workers' compensation laws to apply to federal facilities "in the same way and to the same extent as if the premises were under the exclusive jurisdiction of the State" (*United States v. Washington*).
- **Religion:** The Court agreed to review a case from the Ninth Circuit that centers on the relationship between the First Amendment's Establishment, Free Exercise, and Free Speech Clauses. The case involves a dispute between a school district and football coach regarding his practice of praying on the football field immediately after games ended. The school district ordered the coach to end this practice, claiming it violated the district's obligations under the Establishment Clause. The dispute ultimately led to the district recommending he not be rehired as coach, and he filed suit. While some of the underlying facts of the case are disputed by the parties, the key legal issues include (1) whether the coach's practice of engaging in a post-game prayer on the football field constituted government speech not entitled to First Amendment protection; and (2) assuming the coach's prayer was private speech protected by the First Amendment, whether the school was nonetheless required under the Establishment Clause to prohibit the coach from engaging in religious expression in this context (*Kennedy v. Bremerton School District*).
- **Veterans:** By statute, a veteran can challenge the Department of Veterans Affairs' denial of a benefits claim when the decision was based on "clear and unmistakable error." On appeal from the Federal Circuit, the Supreme Court is asked whether this standard allows a veteran to challenge a benefit denial premised on an agency legal interpretation later deemed invalid under the plain text of the governing statute (*George v. McDonough*).

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