

# Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Jan. 10–Jan. 16, 2022), Part 2

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 2] discusses notable decisions of the courts of appeals during the week of January 10 to January 16, 2022, while a companion Sidebar, [Part 1](#), addresses Supreme Court decisions from that period.)

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

Topic headings marked with an asterisk (\*) indicate cases where the appellate court's controlling opinion recognizes a split among the federal appellate courts on a key legal issue resolved in the opinion, contributing to a non-uniform application of the law among the circuits.

- **Bankruptcy:** In vacating a bankruptcy court’s award of attorneys’ fees in Chapter 7 proceedings, the Fifth Circuit interpreted Section 330(a) of the Bankruptcy Code, which governs the compensation provided to professionals whose fees are paid by the bankruptcy estate. The panel ruled that Section 330(a) authorizes the award of attorneys’ fees only for services that require legal expertise and that a trustee would not normally

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perform without an attorney's guidance. Here, the panel held that the bankruptcy court failed to determine which services provided by the attorney actually required legal expertise, and it remanded the case to the bankruptcy court for further proceedings (*Sylvester v. Chaffe McCall, LLC*).

- **Communications:** The Fourth Circuit held that a provision of the Communications Act of 1934, as amended, permitting a prevailing party to recover attorneys' fees against the violator of the Act, allows the prevailing party to collect attorneys' fees and expenses it incurs while pursuing the post-judgment collection of awarded fees (*SkyCable, LLC v. DIRECTV, Inc.*).
- **Criminal Law & Procedure:** The First Circuit affirmed a district court's decision denying an inmate's motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act. The panel joined four other circuits in holding that § 3582(c)(1)(A)'s exhaustion requirement is not jurisdictional in nature, meaning that a court need not definitively decide that the defendant satisfied the provision's exhaustion requirements before considering the merits of the inmate's claims. The panel further held that the provision does not grant a district court authority to change an inmate's place of confinement (*United States v. Teixeira-Nieves*).
- **Criminal Law & Procedure:** A divided First Circuit panel held that when the defendant's possession of a gun for sale attracted a buyer, and the defendant used this opportunity to entice the buyer to purchase drugs from him, the "in furtherance of" element of a mandatory minimum sentence was satisfied. 18 U.S.C. § 924(c)(1)(A) sets a mandatory minimum sentence for a person who, "during and in relation to any . . . drug trafficking crime . . . uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm" (*United States v. Ramirez-Frechel*).
- **Criminal Law & Procedure:** The Ninth Circuit joined several circuits in recognizing that a conviction under 18 U.S.C. § 2114(a) for assaulting a mail carrier with the intent to steal mail, while placing the carrier's life in jeopardy through the use of a dangerous weapon, is categorically a "crime of violence" under 18 U.S.C. § 924(c)(3), resulting in the offender being subject to a mandatory minimum sentence and potentially facing other legal consequences (*United States v. Buck*).
- **Criminal Law & Procedure:** The Ninth Circuit ruled that a third party intervening in a criminal forfeiture proceeding is limited under 18 U.S.C. § 853(n)(6) to raising claims that it has a superior or bona fide interest in the forfeited property. The intervenor cannot, however, re-litigate whether the criminal defendant has a forfeitable interest in the first place (*United States v. Houseco., LLC*).
- **Criminal Law & Procedure:** In deciding whether the petitioner engaged in criminal conduct rendering him removable under immigration laws, the Ninth Circuit considered the mental state necessary for criminal liability to attach under 18 U.S.C. § 844(i), which makes it a criminal offense to "maliciously" damage or destroy certain property by means of fire or an explosive. The panel held that a defendant must have (1) engaged in an intentional act that resulted in damage or destruction of covered property and (2) been subjectively aware of the risk that his actions would result in harm to the property (*Togonon v. Garland*).
- **Education:** The First Circuit affirmed a district court's dismissal of a suit asserting that Rhode Island's alleged failure to provide public school students with an adequate civics education violated students' constitutional rights. Among other things, the panel affirmed the lower court's conclusion that an adequate civics education is not a fundamental constitutional right. The panel observed that courts had only recognized claims relating to

a fundamental right to education when there had been a total deprivation of a minimally adequate education, and the plaintiffs' allegations did not rise to that level. The court also observed that Rhode Island's reasons for deemphasizing civics education in relation to other subjects—premised on resource constraints and competing educational demands—satisfied the forgiving rational basis standard necessary to turn away the plaintiffs' equal protection and substantive due process claims (*A.C. by Waithe v. Mckee*).

- **\*Labor & Employment:** A divided First Circuit panel affirmed a district court's denial of an employer's motion to dismiss "opt-in" claims brought by out-of-state current and former workers who joined the named plaintiffs' suit for unpaid overtime wages under the Fair Labor Standards Act (FLSA). Joining most circuits, the panel majority held that the FLSA's collective action procedures enable opt-in plaintiffs to become parties to the action upon filing consent forms, without the district court first addressing whether they are similarly situated to the named plaintiffs. The panel majority also rejected the employer's Fifth Amendment and jurisdiction-related challenges to inclusion of the out-of-state plaintiffs, resulting in a split with the Sixth and Eighth Circuit's interpretation of Federal Rule of Civil Procedure Rule 4(k). The majority concluded that the conditions imposed by Rule 4(k) on the service of the summons needed to establish personal jurisdiction over the defendant apply only at the time of initial service; they do not need to be satisfied for any additional claims or plaintiffs added to the case (*Waters v. Day & Zimmermann NPS, Inc.*).
- **Tax:** On appeal from the Tax Court, the D.C. Circuit held that subject-matter jurisdiction did not exist over petitioner's claim that her request for a whistleblower award was improperly rejected by the Internal Revenue Service (IRS) Whistleblower's Office. Although 26 U.S.C. § 7623(b)(4) provides the Tax Court with jurisdiction to review a "determination regarding" a whistleblower award, the circuit panel held that the provision does not confer the Tax Court with jurisdiction over the IRS's threshold rejection of an award request, when the whistleblower provided only vague or speculative information and the agency did not take action against the targeted taxpayer (*Li v. Commissioner of Internal Revenue*).
- **Transportation:** The Fifth Circuit affirmed the dismissal of a products liability suit against a school bus manufacturer alleging liability under state law, holding that it was preempted by the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standard governing school bus manufacturers. The panel held that the Standard, which requires that school buses be equipped with emergency exits that are manually operable, preempts a state common law duty to include an automatic lock and safety device because it would be impossible for a manufacturer to comply with both state and federal requirements (*Estate of Miranda v. Navistar, Inc.*).
- **Transportation:** The Tenth Circuit held that the Interstate Commerce Commission Termination Act (ICCA), which establishes an exclusive federal scheme for the economic regulation of railroad transportation, preempted an Oklahoma statute intended to prevent trains from blocking vehicular traffic, including emergency vehicles, for extended periods. Although Oklahoma argued that the preemptive effect of the ICCA was circumscribed by the Federal Railroad Safety Act (FRSA) to the extent it addressed rail safety issues, the circuit court declined to reach this issue after concluding the state law addressed public safety issues, not rail safety issues addressed by the FRSA (*BNSF Railroad Co. v. Hiett*).

## Author Information

Michael John Garcia  
Section Research Manager

Juria L. Jones  
Section Research Manager

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