

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Feb. 14–Feb. 20, 2022)

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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 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.

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Decisions of the Supreme Court

Last week, the Supreme Court added one case to its docket:

- **Immigration:** The Court agreed to review a decision from the Fifth Circuit instructing the Department of Homeland Security (DHS) to restart the Migrant Protection Protocols (MPP), a policy implemented in 2019 requiring most asylum seekers arriving at the southern border to wait in Mexico while their asylum claims are processed. DHS announced it was terminating the MPP in early 2021. The district court ordered a recommencement of the MPP, and the Supreme Court declined an application to stay this order in 2021. On appeal, the Fifth Circuit affirmed the district court’s judgment, concluding that DHS’s termination decision was arbitrary and capricious under the Administrative Procedure Act and contravened governing immigration statutes. In granting certiorari to review the case, the Supreme Court scheduled oral arguments for April 2022 (*Biden v. Texas*).

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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.

- **Consumer Protection:** The Fourth Circuit held that the Truth in Lending Act—by way of amendments made by the Dodd-Frank Wall Street Reform and Consumer Protection Act restricting arbitration over residential mortgage loan agreements—barred a bank from compelling arbitration in a dispute over its use of funds from the plaintiff's deposit account to pay the outstanding balance of his home equity loan (*Lyons v. PNC Bank*).
- ***Criminal Law & Procedure:** Adding to a circuit split, the Tenth Circuit held that the Mandatory Victims Restitution Act, 18 U.S.C. § 3663A, which requires a district court to award restitution to reimburse victims of an offense for transportation costs incurred to attend proceedings related to that offense, does not permit a victim's representative to substitute his or her travel expenses for the victim's expenses (*United States v. Casados*).
- **Criminal Law & Procedure:** The Eleventh Circuit held that a criminal defendant's conviction for distributing crack cocaine within 1,000 feet of a public housing facility and school was not a "covered offense" under the First Step Act, making him ineligible for a sentence reduction under the Act (*United States v. Williams*).
- **First Amendment (Speech):** The Eleventh Circuit affirmed a district court's dismissal of a plaintiff's challenge to a Florida law requiring a license to practice as a dietician and nutritionist, which the plaintiff claimed violated her First Amendment right to communicate with clients her opinions and advice on diet and nutrition. Relying on circuit precedent, the court held a state permissibly regulated plaintiff's professional conduct by way of a generally applicable licensing statute, even if that conduct incidentally involved speech. Applying the forgiving rational basis standard of review to the plaintiff's claim, the court upheld the state law because it was rationally related to a legitimate state interest in promoting public health and safety (*Del Castillo v. Secretary, Florida Dep't of Health*).
- ***Immigration:** Splitting from two other circuits, the Eleventh Circuit held that a conviction for falsely representing a Social Security number under 42 U.S.C. § 408(a)(7)(B) is not a crime of moral turpitude, a category of criminal offenses that carry serious immigration consequences for an alien convicted of a covered crime (*Zarate v. Attorney General*).
- **Labor & Employment:** The Fourth Circuit concluded, among other things, that the Labor Management Relations Act did not compel arbitration of a dispute over whether to add or remove employers from a trust agreement between a union and multiple employers concerning employment benefits (*Krueger v. Angelos*).
- **Securities:** Reversing a district court decision, the Eleventh Circuit held that plaintiffs' civil suit against an online promotions company that marketed cryptocurrency could proceed under Section 12 of the Securities Act of 1933 for soliciting the purchase of an unregistered security. The court rejected the company's argument that solicitation under Section 12 requires a direct sales pitch to a particular person, and instead concluded the provision also covered the promotion of an unregistered security in a mass communication (*Parks v. BitConnect International PLC*).

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