

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Feb. 21–Feb. 27, 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 issued a decision in one case for which it heard oral arguments:

- **Intellectual Property:** In a 6-3 opinion, the Court held that mistakes of fact or law made in a copyright registration application do not invalidate the copyright registration if the applicant lacked knowledge of the factual or legal error (*Unicolors, Inc v. H&M Hennes & Mauritz, LP*).

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The Court also granted certiorari to review two cases and announced it would hear two other cases involving disputes over which it has [original jurisdiction](#):

- **First Amendment (Speech):** The Court agreed to review a case from the Tenth Circuit involving a wedding website designer's First Amendment challenge to a state antidiscrimination law. The designer, who has religious objections to same-sex marriages, claims that if the state applied the law to compel her to create wedding websites for such marriages, it would violate the First Amendment's Free Speech and Free Exercise Clauses. Lower courts rejected plaintiff's various constitutional challenges to the law, with the Tenth Circuit holding that the state's possible infringement of plaintiff's free speech rights was justified under the circumstances. In granting certiorari, the Supreme Court agreed to review only the question: "Whether applying a public-accommodation law to compel an artist to speak or stay silent violates the Free Speech Clause of the First Amendment" (*303 Creative LLC v. Elenis*).
- **Property:** The Supreme Court announced it would consider two cases next term involving disputes over which state may take custody of or assume title to ("escheat") the proceeds from certain abandoned monetary instruments issued by MoneyGram Payment Systems, a money transfer company. The central question is whether the instruments fall under the Federal Disposition of Abandoned Money Orders and Traveler's Checks Act, which establishes priority rules for determining which state may escheat covered instruments, or whether the disposition of the unclaimed property is instead governed by common law, which would favor Delaware's escheatment claims as the state where MoneyGram is incorporated (*Delaware v. Pennsylvania & Wisconsin*; *Arkansas v. Delaware*).
- **Veterans:** The Court agreed to review a case from the Federal Circuit to consider whether the one-year filing deadline for 38 U.S.C. § 5110(b)(1), which permits a veteran to obtain disability benefits retroactively from the date of his or her discharge, is subject to equitable tolling (*Arellano v. McDonough*).

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.

- **Abortion:** The Fourth Circuit affirmed a district court's preliminary injunction blocking enforcement of a South Carolina law banning abortions after a "fetal heartbeat" can be detected by ultrasound. On appeal, state officials did not challenge the lower court's ruling that the law impermissibly deprives persons of their constitutional right to an abortion, but instead contended that the plaintiffs-abortion providers lacked standing to pursue their challenge and that the district court erred by enjoining the entirety of the state law. The circuit court was not persuaded by these arguments, concluding that the abortion providers had standing to bring suit on behalf of actual or potential patients, and that the state law's abortion ban was not severable from the statute's other provisions (*Planned Parenthood South Atlantic v. Wilson*).
- **Civil Procedure:** The Ninth Circuit affirmed a district court's order remanding to state court a lawsuit brought against a nursing home by the family of a resident who allegedly died due to Coronavirus Disease 2019 (COVID-19). The circuit court decided that removal to federal court was not supported by the federal officer removal statute because the nursing home did not act as a federal officer or carry out a federal duty in its care to

the deceased resident, notwithstanding the federal government's directives regarding nursing homes' response to COVID-19. The court also concluded that the Public Readiness and Emergency Preparedness (PREP) Act did not completely preempt the plaintiffs' state law claims, including those based on negligence or recklessness by the nursing home (*Saldana v. Glenhaven Healthcare LLC*).

- **Consumer Protection:** The Fourth Circuit held that borrower correspondence related to contractual issues, such as an application to a loan servicer for a loan modification, does not constitute a qualified written request (QWR) under the Real Estate Settlement Procedures Act (RESP) and related Consumer Financial Protection Bureau regulations. Once a loan servicer receives a QWR, it is obliged to refrain temporarily from providing adverse information to credit reporting agencies regarding the borrower's account. A majority of a Fourth Circuit panel held that for written correspondence to constitute a QWR, it must provide sufficient information to identify the borrower's account and the alleged loan servicing error. (*Morgan v. Caliber Home Loans, Inc.*).
- **Criminal Law & Procedure:** The Second Circuit held that the Mandatory Victims Restitution Act, which requires defendants convicted of certain offenses to reimburse victims for specified expenses, (1) potentially allows recovery of attorneys' fees incurred by victims in the course of assisting in the investigation and prosecution of the defendant; and (2) does not permit the recovery of expenses incurred by the victim in noncriminal proceedings, such as a Securities and Exchange Commission investigation, even if closely related to a criminal case against the defendant (*United States v. Afriyie*).
- **Criminal Law & Procedure:** In a per curiam opinion, the Second Circuit affirmed a district court's denial of an inmate's motion for compassionate release under 18 U.S.C. § 3582(c)(1), but nonetheless declared that the provision, as amended by the First Step Act, potentially allows a district court to grant compassionate release to a criminal defendant who has received a mandatory minimum sentence (*United States v. Halvon*).
- **Criminal Law & Procedure:** The Fourth Circuit vacated a criminal defendant's conviction for transporting firearms to Haiti to assist the Haitian army in quelling gang violence. The defendant was charged with violating 18 U.S.C. § 922(a)(5), which prohibits the out-of-state transfer of a firearm from one unlicensed person to another. The circuit court concluded that liability attaches under the provision only if the transfer is successfully completed. Because the defendant was arrested by Haitian police and his firearms seized before he could ever deliver them, the court held his conviction could not be sustained (*United States v. Duroseau*).
- **Employee Benefits:** A divided Fourth Circuit panel held that punitive damages are not recoverable in suits brought by labor unions against employers under § 301 of the Labor Management Relations Act for tardy contributions into an employee benefit fund. The majority held that Section 502(g)(2) of the Employee Retirement Income Security Act (ERISA), which permits liquidated damages to be assessed against companies with *unpaid* obligations to employee welfare and benefit funds, was not applicable to the present case, which involved paid—but late—contributions (*Plumbers & Pipefitters v. Nitro Construction Services*).

- **Environmental Law:** The Ninth Circuit affirmed a district court’s judgment in favor of the U.S. Forest Service concerning the agency’s determination that a company could resume its operations at a uranium mine site located in the Kaibab National Forest. The case largely turned on application of the General Mining Act of 1872, which enables U.S. citizens to acquire enforceable property rights to “valuable mineral deposits” they discover on federal land. The court held that the Forest Service did not act arbitrarily and capriciously in ignoring “sunk costs” the company incurred (i.e., costs already incurred that cannot be recovered) when determining the company had a claim to “valuable mineral deposits.” The court also concluded that the Forest Service reasonably relied on a determination of the Department of the Interior (which is charged with administering the Mining Act) that sunk costs are not considered when assessing a mining operation’s value, and that the Department’s approach to sunk costs was entitled to deference under the framework set forth in *Chevron U.S.A., Inc. v. Natural Resources Defense Council (Grand Canyon Trust v. Provencio)*.
- **Intellectual Property:** The Federal Circuit ruled that Section 2(c) of the Lanham Act, which bars the registration of a trademark that includes the name of a living person without his or her written consent, unconstitutionally restricted the free speech rights of an applicant who sought to trademark a phrase critical of former President Donald Trump for use on clothing. While the court suggested that Section 2(c) may be susceptible to a facial challenge as unconstitutionally overbroad, the panel did not reach the issue because the plaintiff only challenged Section 2(c) as applied to his trademark request (*In re Elster*).
- **Intellectual Property:** The Federal Circuit held that the Administrative Procedure Act allowed judicial review of a Patent & Trademark Office determination that it was barred from engaging in an ex parte reexamination of certain patent claims under the ex parte statute because the statute’s text, statutory scheme, and legislative history lacked a “fairly discernable intent” to preclude judicial review of such decisions (*Alarm.com Inc. v. Hirshfeld*).
- **Postal Service:** Reversing the lower court, the D.C. Circuit allowed a suit to go forward challenging the Postal Service’s adoption of a proposed pay package for supervisory personnel. The circuit court ruled that provisions in the Postal Reorganization Act of 1970 authorizing the adoption of pay packages (along with related provisions concerning consultation with representative organizations regarding pay policies) were mandatory and enforceable directives, and the court could properly review claims that the Service exceeded its authority under those provisions. The court remanded the case to the district court for further consideration of plaintiff’s claims (*Nat’l Ass’n of Postal Supervisors v. U.S. Postal Service*).

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