

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (March 28–April 3, 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:

- **Arbitration:** In an 8-1 decision, the Supreme Court held that in reviewing an application to confirm or vacate an arbitration award under Sections 9 and 10 of the Federal Arbitration Act (FAA), federal courts may not “look through” the application to decide whether the underlying dispute gives rise to federal-question jurisdiction. The FAA does not confer federal-question jurisdiction over arbitration disputes, and courts must instead have an independent jurisdictional basis for considering those claims. The Court distinguished applications under Sections 9 and 10 from petitions to compel arbitration under Section 4 of the FAA, as the Court [held](#) previously that Section 4 permits a federal court to “look through” a petition to compel arbitration to determine whether a federal question exists (*Badgerow v. Walters*).

The Supreme Court also granted certiorari in three cases:

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- **Criminal Law & Procedure:** The Supreme Court agreed to consider whether an Arizona Supreme Court ruling that a state procedural rule precluded a death-row inmate's request for post-conviction relief was an adequate and independent state-law ground for denying his claim (*Cruz v. Arizona*).
- **Environmental Law:** The Court agreed to review a case from the Ninth Circuit on whether a California law, which bans the sale of whole pork meat from animals confined in a manner inconsistent with state standards (regardless of whether those animals were held outside of California), violates the "dormant" Commerce Clause in light of its out-of-state effects (*National Pork Producers Council v. Ross*).
- **Intellectual Property:** Granting certiorari in a case from the Second Circuit, the Supreme Court is asked to consider whether pop-artist Andy Warhol violated the copyright of photographer Lynn Goldsmith by repurposing her photograph of the musician Prince, or whether the repurposing was sufficiently transformative as not to violate the Copyright Act (*Andy Warhol Found. for the Visual Arts v. Goldsmith*).

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.

- **Civil Rights:** In a case where a plaintiff alleged that a transit system did not provide meaningful access to disabled bus riders, the Eighth Circuit held that the system's alleged violation of Department of Transportation regulations—requiring drivers to announce any stop at the request of a disabled rider and to receive appropriate training to assist disabled riders—did not constitute a *per se* violation of the Americans with Disabilities Act (ADA). Still, the court reversed the lower court's summary judgment in favor of the agency, concluding that there were genuine issues of material fact on which the suit might be able to proceed (*Segal v. Metro. Council*).
- **Civil Rights:** The Eleventh Circuit held that a plaintiff satisfied constitutional standing requirements to bring suit against a hotel for omitting accessibility-related information from its website as required by ADA regulations. Although the plaintiff indicated she had no intention to visit the hotel, the court concluded that her alleged emotional injury arising from the illegal act gave her a sufficiently concrete and particularized injury to have standing to bring suit (*Laufer v. Arpen LLC*).
- **Consumer Protection:** A divided Seventh Circuit held that a plaintiff did not satisfy constitutional standing requirements to bring suit under the Fair Debt Collections Practices Act over a collection letter she received on a time-barred debt. The majority held that neither the risk that plaintiff might have mistakenly paid the debt, the alleged mental harm caused by receiving the letter, nor her call to the debt collector to dispute the debt and contacting of a lawyer for advice, gave rise to a concrete injury (*Pierre v. Midland Credit Management, Inc.*).
- **Criminal Law & Procedure:** The Eighth Circuit affirmed the conviction and sentence imposed by a district court on a criminal defendant, including the payment of restitution under 18 U.S.C. § 2429, a provision of the Abolish Human Trafficking Act of 2017 (AHTA). The AHTA provision provides the amount of restitution owed to the victim by cross-reference to 18 U.S.C. § 2259(b)(3), but the relevant provision is actually found in 18 U.S.C. § 2259(c)(2). The court concluded this was a clerical error that arose when Congress amended § 2259 and enacted AHTA within weeks of the other. It therefore

construed the AHTA to reference the appropriate provision of § 2259 (*United States v. Kempter*).

- ***Criminal Law & Procedure:** Adding to a circuit split, the Tenth Circuit joined the Seventh and Fourth Circuits in holding that directly forcing a bank customer to withdraw money from an ATM constitutes a federal bank robbery under 18 U.S.C. § 2113(a), because the funds belonged to the bank when the withdrawal occurred. The lower court, aligning with the Fifth Circuit's view, had concluded that the bank customer, rather than the bank itself, had possession of the funds when the robbery occurred, so a necessary element of § 2113(a)—that the money belonged to or was in “the care, custody, control, management, or possession” of a bank—was not satisfied (*United States v. Chavez*).
- **International Law:** The Second Circuit held that the Act of State Doctrine did not foreclose federal antitrust and related state law claims against Haitian government officials and multinational corporations for allegedly conspiring to fix prices of remittances and telephone calls from the United States to Haiti. The court reasoned that the Doctrine bars suit where there is an official act of a foreign state performed within its own territory and the relief sought would require a U.S. court to declare invalid the foreign sovereign's official act. The court remanded to the district court holding, *inter alia*, that the factual predicate applying the Act of State Doctrine did not exist because the claims did not require the court to determine whether any foreign official act was invalid (*Celestin v. Caribbean Air Mail, Inc.*).
- **International Law:** The D.C. Circuit held that neither the International Organizations Immunities Act (IOIA) nor the World Health Organization (WHO) Constitution prevented a class action suit from proceeding against a WHO-affiliated organization alleged to have benefited from human trafficking and forced labor. The IOIA grants covered organizations immunity from suit in U.S. courts to the same degree enjoyed by foreign governments under the Foreign Sovereign Immunities Act (FSIA). The circuit court held that the organization's alleged role as a financial intermediary in the forced labor operation fell under the FSIA's exception to sovereign immunity for suits based on commercial activities. The organization also claimed immunity under the WHO Constitution, but the panel held that the immunity provision of that treaty did not have the force of U.S. law (*Rodriguez v. Pan Am. Health Org.*).
- **Labor & Employment:** Based upon intervening Supreme Court decisions, the Third Circuit, joining the Ninth, Seventh, and Eighth Circuits, overruled its precedential decision and held that a union's collective bargaining agreement's (CBA's) arbitration clause does not survive the CBA's expiration or termination and, as such, the arbitration clause cannot be viewed as a term of a new implied-in-fact CBA. The court held that, as a matter of contract law, the arbitration provisions expired with the CBA because they do not have their own durational clause (*Pittsburgh Mailers Union Local v. PG Publishing Co.*).

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