

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Apr. 4–Apr. 10, 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:

- **Criminal Law & Procedure:** In a 6-3 decision, the Court held that for a plaintiff to advance a claim against state officials under 42 U.S.C. § 1983 for malicious prosecution in violation of the Fourth Amendment, the plaintiff must show only that the prosecution ended without conviction. The decision resolves a circuit split over whether the plaintiff must also show that his earlier prosecution ended with some affirmative showing of innocence, such as an acquittal or a dismissal accompanied by a statement from the judge that the evidence was insufficient to convict (*Thompson v. Clark*).

The Court also took action on an emergency application:

- **Environmental Law:** By a 5-4 vote, the Court [reinstated](#) a 2020 Clean Water Act rule promulgated by the Environmental Protection Agency while litigation challenging that rule continues. When a project requires federal approval under the Clean Water Act,

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states and tribes must certify that the project will comply with applicable water quality standards. The Trump Administration promulgated a rule that limited the grounds on which states and tribes could review such projects. The Northern District of California vacated the Trump Administration's rule and reinstated the earlier certification process. The effect of the Supreme Court's order is to allow the rule to remain in effect while the Ninth Circuit considers an appeal of the district court's decision. The majority did not issue an opinion explaining the reasons for its order (*Louisiana v. American Rivers*).

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.

- **Banking:** A divided Tenth Circuit held that extended overdraft charges to a checking account are considered “non-interest charges and fees” for “deposit account services” governed by 12 C.F.R. § 7.4002 rather than “interest” charges governed by 12 C.F.R. § 7.4001. The distinction can lead to significant monetary differences because the National Bank Act of 1864 sets interest-rate limits that may be lower than some banks’ charges for extended overdrafts; and the Act provides a cause of action for those charged more than the Act’s interest-rate limit. Similar to other circuits’ approach, the majority held that the governing regulations are ambiguous as to how to categorize extended overdraft charges, but deferred to Office of the Comptroller of the Currency’s reasonable interpretation of the regulations, which recognized that such charges are not “interest” under 12 C.F.R. § 7.4001 (*Walker v. BOKF, Nat’l Ass’n*).
- ***Civil Rights:** Adding to a circuit split, the Eleventh Circuit held that a public entity cannot be held vicariously liable for money damages under Title II of the Americans with Disabilities Act for the purposeful or deliberate conduct of its employees. The court therefore upheld a district court’s dismissal of the plaintiff’s Title II claim against a sheriff for his deputies’ conduct. The court did, however, allow the plaintiff’s civil rights claims against the deputies in their individual capacities to proceed (*Ingram v. Kubik*).
- **Criminal Law & Procedure:** The Fifth Circuit held that under the mental competency provisions of 18 U.S.C. § 4241, a criminal defendant who had initially been ordered by the trial court to be committed for a period of evaluation and treatment, and was thereafter certified by the hospital warden to be competent to stand trial, could be ordered to undergo an additional period of commitment by the district court if the defendant again became incompetent. The court construed Section 4241 as allowing up to two periods of commitment for a criminal defendant, after which civil commitment proceedings would need to be instituted to compel further treatment (*United States v. Ceasar*).
- **Criminal Law & Procedure:** The Ninth Circuit held that in order for a criminal defendant to be eligible for compassionate release from imprisonment under 18 U.S.C. § 3582(c)(1)(A), the defendant must have already begun his period of incarceration (*United States v. Fowler*).
- **Criminal Law & Procedure:** A divided Tenth Circuit held, in a criminal prosecution under 18 U.S.C. § 1512(b)(1) and (k) for conspiring to tamper with a witness in a federal proceeding, the government must show the defendant had contemplated the witness’s participation in a proceeding that was reasonably likely to be federal (*United States v. Sutton*).

- **Environmental Law:** On [remand](#) from the Supreme Court, the Fourth Circuit held that a climate-change suit brought under Maryland state law by the Mayor and City Council of Baltimore against multinational oil and gas companies should be heard in Maryland state court. The court held that there was no basis under the applicable statutes for removal of the suit to federal court (*Mayor & City Council of Baltimore v. BP P.L.C.*).
- **Environmental Law:** A divided Ninth Circuit held that the Department of the Interior (DOI) violated the National Environmental Protection Act (NEPA) when it concluded that a proposed expansion of a Montana coal mining operation would not have a significant environmental impact. The court held that DOI must consider the potential climate-change effects of the coal combustion produced by the mine, although it rejected plaintiffs' more specific contention that DOI must do so using a particular estimate of the "social cost of carbon." The court did not vacate the DOI's approval of the expanded mining operation, but instead remanded the case to the district court for further fact-finding, while allowing the mining operation to continue in the meantime (*350 Montana v. Haaland*).
- **Immigration:** The Second Circuit largely reversed a district court ruling that would have required the release of records related to certain agencies' interpretations and application of federal immigration statutes that allow for the exclusion of aliens involved in terrorist activity. The panel held that the requested portions of the State Department's Foreign Affairs Manual, along with questions used by U.S. Citizenship and Immigration Services to determine whether an applicant for admission falls under the terrorism-related grounds for exclusion, were properly withheld under the Freedom of Information Act (FOIA) exemption for certain law enforcement records. The court remanded the case to the district court to assess whether the plaintiff's other record request, concerning an Immigration and Customs Enforcement (ICE) memorandum, had been rendered moot by subsequent action taken by ICE in response to the district court order (*Knight First Amendment Institute v. U.S. Citizenship & Immigration Services*).
- **Labor & Employment:** In construing the meaning of "employer" under the Multiemployer Pension Plan Amendments Act (MPPAA), the Third Circuit joined every other circuit to consider the issue, holding that the term has the same meaning as is used in Title I of the Employee Retirement Income Security Act, which the MPPAA amends. Under that standard, an employer is an entity obligated to contribute to a pension plan either as a direct employer or on behalf of one. In this case, because the plaintiff contractor was considered an employer under MPPAA, the contractor would be compelled to resolve a dispute about a pension plan withdrawal fee through arbitration, rather than in federal court (*J. Supor & Son Trucking & Rigging Co. v. Trucking Employees of New Jersey Welfare Fund*).
- **Labor & Employment:** A divided Fifth Circuit vacated a district court's preliminary injunction halting implementation of an executive order generally requiring federal employees to be vaccinated against the Coronavirus Disease 2019 (COVID-19). The majority concluded that the Civil Service Reform Act precluded the district court from exercising subject-matter jurisdiction over the legal challenge to the order (*Feds for Medical Freedom v. Biden*).

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- ***Labor & Employment:** Adding to a circuit split, the Eighth Circuit held that a plaintiff undergoing a background check did not have standing to pursue claims against an employer for violating the Fair Credit Reporting Act (FCRA), when the employer did not provide her with a copy of her consumer report or other required information before taking adverse employment action based on the report. The Eighth Circuit held that these procedural violations did not give rise to a harm sufficient to meet constitutional standing requirements. Among other things, the panel concluded that (1) FCRA does not confer on an applicant a right to explain negative but accurate information found in a consumer report to a prospective employer; and (2) assuming plaintiff's contention that the background check went beyond the scope of the authorization she gave to conduct a background check, the plaintiff still failed to plead a privacy injury from that search sufficient to meet standing requirements (*Schumacher v. SC Data Center, Inc.*).
- **Tax:** The Fourth Circuit reversed and remanded a Tax Court decision holding that payments made to a Russian scientist working as a researcher at a Department of Energy facility were exempt from U.S. taxation under the U.S.-Russia Tax Treaty. Under the Treaty, "salaries, wages, and other similar remuneration" of covered nationals are taxable by the other country for work performed there, while funds in the form of a "grant, allowance, or other similar payments" are not. The panel held that these categories are exclusive, and concluded that a key difference is that taxable work involves a substantial quid pro quo element, while nontaxable grants generally do not. The panel remanded the case to the Tax Court to assess the appropriate classification for the payments made to the scientist (*Baturin v. Commissioner of Internal Revenue*).

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