

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (April 18–April 24, 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 five cases for which it heard oral arguments:

- **Criminal Law & Procedure:** In a 6-3 opinion, the Supreme Court held that when a state court has ruled on a prisoner’s challenge to his or her conviction, a federal court cannot grant habeas relief unless it applies both the test set forth in [Brecht v. Abrahamson](#) and the one established by the Antiterrorism and Effective Death Penalty Act ([Brown v. Davenport](#)).
- **Sovereign Immunity:** In a unanimous opinion, the Court held when a federal court hears a state law claim against a foreign government or instrumentality under the Foreign Sovereign Immunities Act, it must apply the same choice-of-law rules that apply in similar suits against private parties. In this case, that choice-of-law rule was provided by the law of the forum state, not federal common law ([Cassirer v. Thyssen-Bornemisza Collection Found.](#)).

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- **Speech:** By a 5-4 vote, the Court held that a city's sign code, which sets different rules for signs advertising things at the location and signs advertising things off-premise, was a facially content-neutral regulation under the First Amendment that was not subject to strict scrutiny review. The Court remanded the case to the lower court to determine whether the distinction was drawn for non-content neutral purposes and whether the distinction was narrowly tailored to serve a significant government interest (*City of Austin v. Reagan Nat'l Advertising of Austin, LLC*).
- **Tax:** In a 9-0 decision, the Supreme Court held that the 30-day time limit to petition the Tax Court to review a collection due process hearing—an Internal Revenue Service proceeding at which a taxpayer can challenge a proposed levy to collect tax debts—is not a limit on federal-court jurisdiction and therefore is subject to equitable tolling (*Boechler, P.C. v. Commissioner of Internal Revenue*).
- **Territories:** In an 8-1 decision, the Supreme Court held that the Constitution does not require Congress to make Supplemental Security Income benefits available to residents of Puerto Rico to the same degree as those benefits are made available to residents of the states (*United States v. Vaello Madero*).

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:** The Seventh Circuit held that a city's possessory lien on a vehicle it impounded due to unpaid tickets should be characterized as a "judicial lien" under the Bankruptcy Code—that is, a lien "obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding"—making it avoidable in bankruptcy under 11 U.S.C. § 522(f) (*In the Matter of Mance*).
- **Civil Liability:** On remand from the Supreme Court, the Ninth Circuit reaffirmed a district court's preliminary injunction that prevented LinkedIn, a professional networking website, from blocking a competitor from collecting and using information that LinkedIn users share in their public profiles. The panel concluded that the plaintiff had raised serious questions about whether LinkedIn could invoke the Computer Fraud and Abuse Act to preempt the plaintiff's tortious interference claim (*hiQLabs, Inc. v. LinkedIn Corp.*).
- **Criminal Law & Procedure:** In consolidated appeals, the Eleventh Circuit affirmed a district court's decision not to suppress evidence acquired through a wiretapping order against several criminal defendants in a drug tracking conspiracy. The court held that wiretap recordings were sealed consistent with the requirements of Title III of the Omnibus Crime Control and Safe Streets Act, even though the judge who authorized the wiretap had not issued a separate, written sealing order. The court also decided that any delay in sealing the wiretap recordings was not impermissible, relying in part on the lack of a tactical advantage to the government or prejudice to the defendants caused by the delay (*United States v. Stowers*).
- **Environmental Law:** On remand from the Supreme Court, the Ninth Circuit reaffirmed a district court's order remanding climate-liability suits brought by local governments to California state court. At the time of removal, the complaints only alleged violations under state tort law, specifically that the defendant energy companies' extraction of fossil fuels and other activities were a substantial factor in causing global warming and sea

level rise. The panel agreed with the district court that the federal statutes cited by the defendants did not provide federal courts with subject-matter jurisdiction over the complaints (*County of San Mateo v. Chevron Corp.*). (As noted in a prior issue of the *Congressional Court Watcher*, the Fourth Circuit similarly concluded earlier this month that a climate-change suit brought under state law by the City of Baltimore against certain oil and gas companies should be heard in Maryland state court.)

- **Environmental Law:** The Ninth Circuit agreed with a district court that the U.S. Fish and Wildlife Service did not violate the Alaska National Interest Lands Conservation Act (ANILCA) or other statutes when it limited certain hunting practices in the Kenai National Wildlife Refuge. The panel concluded that ANILCA preserved the federal government's plenary power over Alaskan public lands, so it made no difference that Alaska had approved the hunting practices. The panel also held that a 2017 congressional joint resolution related to Alaska hunting practices did not apply to the rule at issue. Finally, the court rejected various arguments that the Service's rule was invalid under the Administrative Procedure Act and the National Environmental Policy Act (*Safari Club Int'l v. Haaland*).
- **Environmental Law:** The Ninth Circuit vacated the Environmental Protection Agency's denial of a petition under the Federal Insecticide, Fungicide, and Rodenticide Act to cancel registration of the pesticide tetrachlorvinphos, which had been approved for use in household pet products. The court ruled that the agency's denial was not supported by substantial evidence, and it instructed the agency to provide a revised response within 120 days (*Natural Resources Defense Council v. EPA*).
- **Health:** Affirming a district court's judgment in favor of a defendant health insurance company against breach of contract claims, the Second Circuit considered the application of the Affordable Care Act (ACA) and its implementing rules. The panel concluded that ACA was ambiguous as to whether the statute's individual or family out-of-pocket annual expense limits applied to an individual covered by a family health insurance plan. While a 2015 Department of Health and Human Services rule provided that individuals covered by family plans were subject to the individual out-of-pocket expense limits, the court held this rule did not apply retroactively to earlier health insurance plans. In this case, the plain terms of the plan provided that the plaintiff was obligated to meet the family out-of-pocket limit (*Fisher v. Aetna Life Insurance Co.*).
- **Labor & Employment:** The Fifth Circuit upheld President Biden's removal of the General Counsel of the National Labor Relations Board. The court held that the National Labor Relations Act (NLRA) does not provide the same tenure protections to persons occupying the General Counsel position as granted to Board members, and the General Counsel may therefore be removed without cause by the President. Because the General Counsel's removal was lawful, the court held that a subsequent unfair practices prosecution heard by the Board, and brought by the acting General Counsel who succeeded the removed officer, was not rendered invalid (*Exela Enterprise Solutions, Inc. v. Nat'l Labor Relations Bd.*).

- **Speech:** The Ninth Circuit allowed an Oregon minority-party state senator to proceed with a First Amendment retaliation claim against majority party members. After members of the minority party had staged a walkout to prevent a legislative quorum, members of the majority had threatened to send the state police to arrest the minority members and return them to the capitol. The plaintiff made statements on the state senate floor and to reporters that the defendants perceived to be threatening, and they ordered the plaintiff not to enter the state capitol without giving 12 hours' notice. As an initial matter, the Ninth Circuit held that the framework used to review speech restrictions on government employees should not be employed to review speech restrictions on elected officials. The panel also concluded that the plaintiff raised a plausible inference that he was engaged in protected speech, and that even a statement that threatens violence may not be a true threat if the context shows it to be emotionally charged rhetoric or political opposition. The court concluded that, at the pleading stage of the case, the lower court did not have grounds for dismissal (*Boquist v. Courtney*).
- **Speech:** The Eleventh Circuit ruled in favor of an organization with student members that challenged a university's policies on discriminatory harassment and bias-related incidents policies. Reviewing a lower court's denial of a preliminary injunction, the Eleventh Circuit held that (1) the plaintiff organization had standing to bring a First Amendment challenge and (2) the plaintiff was entitled to an injunction against the discriminatory-harassment policy because it likely violated the First Amendment and other factors supported the issuance of an injunction. The court remanded the challenge to the bias-related incident policy to the district court for further consideration, as the lower court had not reached the merits of the challenge because it erroneously concluded that the plaintiff lacked standing to bring suit (*Speech First, Inc. v. Cartwright*).
- **Tax:** The Sixth Circuit ruled in the government's favor in a tax dispute over the proper calculation of gross income. A fuel producer had earned a fuel excise tax credit by mixing renewables into its products, but it claimed that it was entitled to calculate its gross income based on the full, unreduced amount of excise tax. The court concluded that by the plain terms of the relevant provision of the Internal Revenue Code, 26 U.S.C. § 6426(a)(1), the receipt of the tax credit reduced the recipient's excise tax burden for purposes of that calculation (*Delek US Holdings, Inc. v. United States*).
- **Terrorism:** In affirming a district court's ruling that the government properly distributed compensation funds to the family of a victim of state-sponsored terrorism, the D.C. Circuit concluded that amendments made in 2019 to the United States Victims of State Sponsored Terrorism Act—which increased the percentage of sanctions penalties that would go into the compensation fund established by the earlier act—did not have retroactive effect entitling the family to additional compensation (*Braun v. United States*).

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