

# Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (April 25–May 1, 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.

Some of the cases identified in this Sidebar, or the legal questions they address, are examined in other CRS general distribution products. Members of Congress and congressional staff may [click here](#) to subscribe to the *CRS Legal Update* and receive regular notifications of new products and upcoming seminars by CRS attorneys.

## Decisions of the Supreme Court

Last week, the Supreme Court issued decisions in two cases for which it heard oral arguments:

- **Civil Rights:** In a 6-3 decision, the Court held that emotional distress damages are not recoverable in private suits alleging discrimination under the Rehabilitation Act of 1973 or the Affordable Care Act (*Cummings v. Premier Rehab Keller, PLLC*).
- **Transportation:** An evenly divided 4-4 Court (with Justice Amy Coney Barret recused) affirmed the Seventh Circuit’s judgment that a locomotive is in “use” on a railroad line for purposes of the Locomotive Inspection Act and its implementing safety regulations when the train is stationary and in need of service (*LeDure v. Union Pacific Railroad Co.*).

The Supreme Court also granted certiorari to review two cases:

- **Civil Rights:** The Court agreed to hear a case from the Fifth Circuit in which it is asked whether the statute of limitations to bring a claim under 42 U.S.C. § 1983 seeking

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deoxyribonucleic acid (DNA) testing of crime-scene evidence starts once the state trial court denies the DNA testing, or only after all state-court actions, including appeals, are completed (*Reed v. Goertz*).

- **Civil Procedure:** The Court agreed to review a case from the Pennsylvania Supreme Court in which it is asked to consider whether the Fourteenth Amendment's Due Process Clause bars a state from requiring an out-of-state corporation to consent to personal jurisdiction in the state's courts to do business in the state (*Mallory v. Norfolk Southern Railway Co.*).

## 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:** In a brief per curiam opinion, a divided Fifth Circuit panel ordered dismissal of legal challenges to the private enforcement provisions of the Texas Heartbeat Act (also known as S.B. 8), after the Texas Supreme Court answered a certified question from the panel in which it concluded that the Texas medical board and other state actors could take disciplinary action against those who violate S.B. 8. S.B. 8 generally bans abortion once a fetal heartbeat is detected and is enforced exclusively through private civil actions against those who perform, aid, or abet prohibited abortions. The circuit court instructed the district court to consider whether plaintiffs had standing to challenge another provision of S.B. 8, which would make them jointly and severally liable for legal costs incurred by the state in defending the bill (*Whole Women's Health v. Jackson*). (Earlier appellate and Supreme Court decisions in lawsuits challenging S.B. 8 in federal court are discussed in [prior editions](#) of the *Congressional Court Watcher*.)
- **Civil Procedure:** The Third Circuit ruled that a district court misapplied the federal removal statute, 28 U.S.C. § 1446, which may permit a defendant to remove a case from state to federal court if certain requirements are met. Under § 1446(b), a defendant generally has 30 days to seek removal after receiving a copy of a pleading that reveals the existence of federal jurisdiction or, if that pleading does not show that federal jurisdiction exists, the defendant may seek removal within 30 days of receipt of an amended pleading, motion, order, or other paper that does so. Joining other circuits, the Third Circuit held that these 30-day clocks are triggered by information within the four corners of the pleading or other documents that the defendant receives, and not by what the defendant subjectively knew already, including from documents already in its possession. Having concluded that the defendant timely removed two class action complaints to federal court, the circuit court remanded the case to the district court to determine whether an exception found in the Class Action Fairness Act nonetheless required the district court to decline to decide the cases (*McLaren v. UPS Store Inc.*).
- **Criminal Law & Procedure:** The Ninth Circuit held that neither the Stored Communications Act nor the Protect Our Children Act transformed Yahoo's and Facebook's searches of the criminal defendants' user accounts and reporting of illegal activity to federal law enforcement into government searches subject to the Fourth Amendment. More generally, the panel majority concluded there was insufficient law enforcement involvement in the searches to trigger Fourth Amendment protections (*United States v. Rosenow*).

- **\*Environmental Law:** Overruling earlier circuit precedent to the contrary, the First Circuit, sitting en banc, held that a provision of the Clean Water Act, 33 U.S.C. § 1319(g)(6)(A), which precludes citizen enforcement suits that seek to apply a civil penalty to a defendant for an ongoing violation, does not limit citizen suits seeking declaratory or injunctive relief to address an ongoing violation of the Act. In so holding, the court switched sides in a multicircuit split on the proper interpretation of the limitation, breaking from the view it once shared with the Eighth Circuit, and instead adopting the interpretation endorsed by the Tenth Circuit (*Blackstone Headwaters Coal. v. Gallo Builders, Inc.*).
- **Environmental Law:** The Sixth Circuit held that a declaratory judgment of liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is sufficient to trigger CERCLA's statute of limitations for contribution claims, under which a party held liable for costs associated with cleaning up hazardous waste sites may seek contribution from others who are also potentially liable for cleanup costs (*Georgia Pacific Consumer Products LP v. NCR Corp.*).
- **Immigration:** The en banc Ninth Circuit vacated an earlier three-judge panel decision ruling that a California law phasing out private detention centers in the state was likely unlawful. The case is now ordered to be reheard by the full en banc court. As discussed in an [earlier edition](#) of the *Congressional Court Watcher*, a divided three-judge Ninth Circuit panel had ruled that the plaintiffs would likely succeed in their claims that the state law impermissibly interfered with the Secretary of Homeland Security's statutory authority to contract with private facilities to detain aliens targeted by the federal government for removal. The panel majority also ruled that the state law violated the intergovernmental immunity doctrine, which bars states from directly regulating or discriminating against the federal government, by providing certain exemptions for state agencies that were unavailable to federal authorities (*GEO Group, Inc. v. Newsom*).
- **Indian Law:** A divided Sixth Circuit held that the district court erred in construing an Indian Health Service regulation, 42 C.F.R. § 136.30, requiring that a covered tribe may receive Medicare-like rate (MLR) discounts on services provided to tribe members at Medicare-participating hospitals only when the tribe pays for such care using funds earmarked for its Contract Health Services (CHS) program. The majority concluded that MLR discounts are available for CHS-authorized care even when a tribe pays for the services using non-CHS sources. The court remanded the case to the lower court for further proceedings, including to assess whether the tribe's CHS program authorized the particular services at issue in the case (*Saginaw Chippewa Indian Tribe of Michigan v. Blue Cross Blue Shield of Michigan*).
- **International Law:** The First Circuit construed the meaning of Article 17(1) of the Montreal Convention (formally known as the Convention for the Unification of Certain Rules for International Carriage by Air), which makes carriers liable to passengers injured in an "accident" taking place onboard an aircraft or when embarking or disembarking a plane. Looking to domestic and foreign jurisprudence interpreting the Convention and a predecessor treaty, the First Circuit held that an "accident" is an event that a reasonable passenger in commercial air travel, standing in the plaintiff's shoes, would not expect to happen (*Moore v. British Airways PLC*).
- **Separation of Powers:** The Ninth Circuit held that 42 U.S.C. § 902(a)(3), which limits the President's ability to remove the Commissioner of Social Security except for "neglect of duty or malfeasance in office," violates separation-of-powers principles by unconstitutionally infringing on the President's authority to remove the head of an

- executive agency. (The Commissioner conceded the provision was unconstitutional.) The panel concluded that the removal protection must be severed from the statute, leaving the President free to remove the Commissioner at will. Turning to the question of the appropriate remedy where the petitioner challenged the denial of her request for Social Security benefits because the Commissioner served under an unconstitutional removal provision, the panel concluded the claimant had not established that the provision caused her actual harm. The claimant did not dispute that the Social Security officers involved in denying her claim served under valid appointments, and the panel found nothing in the record to suggest a link between the removal provision and her case. The panel also observed that accepting the claimant's argument would effectively undo all disability decisions made by the Social Security Administration while the removal provision was operative, an outcome which the panel flatly rejected (*Kaufmann v. Kijakazi*).
- **Territories:** The First Circuit held that the Puerto Rico Oversight, Management, and Economic Stability Act (commonly known as PROMESA), which authorized the restructuring of the commonwealth's debt, preempted Puerto Rico's existing laws that govern public schoolteacher pensions. The court held modifications to the pension plan approved in the debt restructuring process were valid, even though Puerto Rico did not enact legislation permitting the plan to modify the commonwealth's existing obligations (*In re Financial Oversight & Mgmt. Bd. for Puerto Rico*).

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