

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (May 9–May 15, 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

No Supreme Court opinions were issued this past week, and no new cases were added to the Court’s docket.

Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) indicate cases in which 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 Liability:** Adding to a circuit split, the Ninth Circuit held that the statute of limitations for bringing a civil action under the Shipowner’s Limitation of Liability Act is not jurisdictional, meaning an argument that a claim is time-barred cannot be raised at any time in litigation (or determined *sua sponte* by the court). Instead, untimeliness issues are merits-based arguments appropriately raised in motions for summary judgment. The

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panel also held that a notice of a claim triggering the statute of limitations must (1) be in writing; (2) clearly state that the victim of a maritime incident intends to bring a claim against the vessel owner; and (3) include at least one claim likely to be covered by the Act (*Martz v. Horazdovsky*).

- **Civil Rights:** Sitting en banc, a divided Seventh Circuit clarified its approach to determining whether a school district had actual notice of, and was deliberately indifferent to, a teacher's sexual misconduct violating Title IX's prohibition against discrimination on the basis of sex in educational settings. The court held that an official acquires actual notice upon learning that misconduct constituting sex harassment has occurred, at which point a duty to act is imposed. The majority held that Title IX does not provide for institutional liability based solely on awareness of a risk of future misconduct (*C.S. v. Madison Metro. School Dist.*).
- ***Criminal Law & Procedure:** Adding to a circuit split, a divided Ninth Circuit held that 28 U.S.C. § 2244(b)(1), which requires a federal court to dismiss a second or successive application for habeas relief brought by a state prisoner under 28 U.S.C. § 2254, does not bar consideration of a second or successive application for habeas relief under 28 U.S.C. § 2255 brought by a person in *federal* custody (*Jones v. United States*).
- **Environmental Law:** A divided Ninth Circuit upheld a district court decision that the U.S. Fish and Wildlife Service acted arbitrarily and capriciously in approving a mining plan of operations for an open-pit copper mine in Arizona. The case largely turned on whether 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, allowed a mining company to dispose of waste rock in areas of a National Forest in which it lacked mining rights. Like the lower court, the circuit court found the Service erred in concluding that the Surface Resources and Multiple Use Act of 1955 gave the company the ability to discard waste rock on open National Forest land, or otherwise granted rights beyond those provided by the 1872 law. It also held that while the company held mineral rights in the National Forest, it lacked mining rights over the areas the waste rock would occupy. The court remanded the case to the Service for further proceedings, where it could decide how regulations governing surface use of forest land related to mining may apply (*Center for Biological Diversity v. U.S. Fish & Wildlife Service*).
- **Firearms:** The Ninth Circuit reviewed a district court decision not to enjoin two California restrictions on the sale or transfer of certain firearms to adults under the age of 21 while a Second Amendment challenge to those restrictions continued. The panel agreed with the district court that a provision restricting federally licensed firearms dealers (FFLs) from selling or transferring long guns to young adults, except when the recipient has a hunting license or falls under other limited exceptions, was likely to survive legal challenge under an intermediate scrutiny standard of review. The panel majority held, however, that the district court erred in deciding that California's bar on FFLs selling or transferring semiautomatic centerfire rifles to adults under 21 in most cases was likely to withstand legal challenge, either under the intermediate scrutiny standard used by the district court or under the more exacting strict scrutiny standard that the panel majority believed appropriate. The majority also held that the lower court abused its discretion in concluding that the plaintiffs would not be irreparably harmed in the absence of a preliminary injunction. The circuit court remanded the case for further proceedings consistent with the opinion (*Jones v. Bonta*).

- **Immigration:** A divided Fourth Circuit panel vacated a district court’s preliminary injunction order which required new bond hearings for a class of aliens within the district who were held in immigration custody under 8 U.S.C. § 1226(a). That provision permits detention of persons during the pendency of removal proceedings, but allows their release on bond or their own recognizance unless otherwise subject to mandatory detention. The majority held that a jurisdiction-limiting statute, 8 U.S.C. § 1252(f)(1), barred the district court from issuing class-wide injunctive relief regarding the bond hearing process. The majority also held that the individual plaintiffs were unlikely to succeed in their due process challenges to the detention procedures adopted for the § 1226(a) bond hearings (*Miranda v. Garland*).
- **Labor & Employment:** The Sixth Circuit upheld a penalty imposed on a mine operator for warning employees about an impending safety inspection by the Department of Labor’s Mine Safety and Health Administration. The panel held that a provision of the Federal Mine Safety and Health Act prohibiting advance notice of a mine inspection applied to the mine operator and its employees, and that the restriction the provision placed on the mine workers’ speech withstood a First Amendment challenge because it was narrowly tailored to serve a compelling governmental interest (*KenAmerican Resources, Inc. v. U.S. Secretary of Labor*).
- **Speech:** The Sixth Circuit held that legislative immunity shielded members of a state legislative caucus from liability in a civil suit brought by a former state legislator, who alleged that her removal from the caucus was in retaliation for engaging in speech protected by the First Amendment (*Kent v. Ohio House of Representatives Democratic Caucus*).
- **Tax:** A divided Ninth Circuit held that under a Tax Code provision in effect until the end of 2017, a delinquent partnership return need not be mailed to an Internal Revenue Service (IRS) service center, as would normally be required for the return to be deemed “filed” with the IRS, if the return is delivered to a requesting IRS official authorized to receive and process the return (*Seaview Trading, LLC v. Commissioner of Internal Revenue*).

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