

# Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (August 8–August 14, 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 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

The Supreme Court did not issue any opinions or grants of certiorari this week. The Supreme Court’s next term begins October 3, 2022.

## 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 Rights:** The Second Circuit held that a plaintiff who alleges that a prospective employer failed to accommodate his or her disability during a pre-employment examination cannot successfully bring suit under [Section 504 of the Rehabilitation Act](#) if the individual was facially unqualified for the position sought at the time of the examination (*Williams v. MTA Bus Co.*).

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- **Civil Rights:** In a lawsuit challenging a university's disciplinary proceeding against a student, the Fifth Circuit ruled on the proper pleading standard for [Title IX of the Education Amendments of 1972](#) and the constitutional due process rights afforded to students accused of sexual assault. As to Title IX, the court applied a standard consistent with those announced in the [Second Circuit](#) and the [Seventh Circuit](#): do the alleged facts, if true, raise a plausible inference that a university or its administrators discriminated against the student on the basis of sex? The Court also held that requiring counsel to submit cross-examination questions of the student's accusers to a disciplinary panel, in lieu of counsel's personally cross-examining those accusers, did not violate due process (*Overdam v. Texas A&M Univ.*).
- **Civil Rights:** The Sixth Circuit held that the scope of a catchall provision of the Americans with Disabilities Act (ADA), [42 U.S.C. § 12203\(b\)](#)—which makes it “unlawful to coerce, intimidate, threaten, or interfere with” a person’s “exercise or enjoyment” of an ADA-protected right—must be construed in light of other ADA provisions and the overall statutory structure. The court held that § 12203 does not enable a plaintiff alleging an employment-related ADA claim to bring a claim against a non-employer. The court also held that a provision in the Civil Rights Act of 1871, [42 U.S.C. § 1985\(3\)](#), does not allow claims to be brought against third parties alleging they conspired with an employer to deprive an employee of an ADA-protected right (*Post v. Trinity Health Michigan*).
- **Communications:** In consolidated cases, the D.C. Circuit upheld a 2020 Federal Communications Commission (FCC) rule reallocating a portion of the radio spectrum for use by intelligent transportation systems in vehicles for purposes of communicating with other vehicles on the road. The D.C. Circuit concluded that the FCC complied with the requirements of the [Transportation Equity Act](#) when issuing the rule, adequately explained the basis for its decision, and had not unlawfully revoked or modified existing licenses by reducing the spectrum available to plaintiff licensees (*Intelligent Transportation Society of America v. FCC*).
- **Consumer Protection:** The Third Circuit affirmed the dismissals of multiple lawsuits brought under the [Fair Credit Reporting Act \(FCRA\)](#). The court addressed the duty of consumer agencies to “assure maximum possible accuracy” in credit reports under [15 U.S.C. § 1681e\(b\)](#). Interpreting the FCRA to grant credit report access to an array of users of varying levels of sophistication, the court joined the Sixth Circuit in adopting a “reasonable reader” standard by which a court assesses how a reasonable reader would have understood a credit report. Under this standard, a court must assess the accuracy of credit report entries, not by reviewing the entries in isolation, “but rather by reading the report in its entirety” (*Bibbs v. Trans Union LLC*).
- **\*Consumer Protection:** The Tenth Circuit ruled on the standard for determining false or misleading representations under the Fair Debt Collection Practices Act, [15 U.S.C. § 1692e](#). The court concluded that only material statements violate Section 1692e. As to measuring materiality, the court agreed with other courts that have applied the “reasonable consumer” standard as opposed to the “least sophisticated consumer” standard or the similar “unsophisticated consumer” standard. The court reasoned that the reasonable consumer standard is consistent with other consumer protection laws (*Tavernaro v. Pioneer Credit Recovery, Inc.*).
- **\*Criminal Law & Procedure:** The Fourth Circuit addressed the scope of a court’s analysis when a prisoner moves for in forma pauperis (IFP) status under a provision of the Prison Litigation Reform Act (PLRA) that allows a prisoner to proceed without

prepayment of fees if he is in “imminent danger of serious physical injury,” 28 U.S.C. § 1915(g). The court held that, while IFP movants must show a nexus between their claims on the merits and the alleged imminent danger, neither the text nor purpose of the PLRA requires movants to show that a court can redress the alleged danger. In so ruling, the court declined to adopt a standard from the Second Circuit that incorporated redressability into deciding an IFP motion (*Hall v. United States*).

- **Criminal Law & Procedure:** The Sixth Circuit, in a divided opinion, vacated a 25-year mandatory minimum sentence enhancement imposed under 21 U.S.C. § 841(b)(1)(A)(viii) because one of the predicate state convictions was not a “serious drug felony” as required for application of the enhancement. The court applied the definition of “serious drug offense” from the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(A)(ii), i.e., a state-law crime “involving manufacturing, distributing, or possessing with intent to manufacture or distribute,” a controlled substance. The court followed other circuits in interpreting the Supreme Court’s decision in *Shular v. United States* as requiring a predicate offense to “necessarily entail” conduct described in the ACCA. The court further reasoned that the state statute at issue, meant to apply when someone possesses a prohibited chemical with intent to manufacture methamphetamine but where manufacture is not yet possible, does not “necessarily entail” manufacturing a controlled substance (*United States v. Fields*).
- **Criminal Law & Procedure:** In a divided opinion, the Eighth Circuit affirmed the conviction of a criminal defendant on multiple sex-trafficking counts. The court disagreed as to sex trafficking by force, fraud, or coercion under 18 U.S.C. § 1591(a). The majority held that inducing a victim to work in a massage parlor with knowledge or reckless disregard that working there would cause the victim to engage in a commercial sex act was sufficient for a conviction and the commission of a sex act itself need not be the immediate object of the fraudulent inducement (*United States v. Taylor*).
- **Criminal Law & Procedure:** A divided Eleventh Circuit panel affirmed a conviction under 18 U.S.C. § 1521, which prohibits the filing of a false lien or encumbrance against the property of any officer or employee of the United States. In so ruling, the court interpreted the statute as applying to both current and former federal officers and employees. The court reasoned that the statute contained no temporal restriction that limited coverage to current federal officers or employees (*United States v. Pate*).
- **Environmental Law:** A divided D.C. Circuit panel upheld a National Marine Fisheries Service rule establishing industry-funded monitoring programs for New England fisheries. The court first determined that the rule did not implicate the “major questions” doctrine, which counsels against interpreting general delegations of agency authority as empowering agencies to pursue policies of economic and political significance that are inconsistent with the agencies’ historical assertions of authority. Applying the *Chevron* framework, the majority held that, although the governing Magnuson-Stevens Fishery Conservation and Management Act did not unambiguously authorize the Service to require industry-funded monitoring, the Service’s interpretation of the Act as allowing such monitoring was reasonable and entitled to deference. The majority also rejected arguments that the rule was arbitrary and capricious or issued in a procedurally improper manner (*Loper Bright Enterprises, Inc. v. Raimondo*).
- **Firearms:** The D.C. Circuit rejected a challenge to a rule by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) that interpreted two federal firearms statutes. ATF had interpreted “machine gun,” as defined in the National Firearms Act, 26 U.S.C. § 5845(b), and the Gun Control Act, 18 U.S.C. § 921, as encompassing bump stocks,

which enable a shooter of a semiautomatic firearm to start a continuous firing cycle with a single pull of the trigger. The court reasoned that ATF's interpretation comported with the statutes' texts, purposes, and legislative histories (*Guedes v. ATF*).

- **Freedom of Information Act (FOIA):** The D.C. Circuit held that the U.S. Department of Agriculture (USDA) properly withheld certain information from a FOIA requestor on numbers the agency assigned to farmland and farm owners enrolled in the agency's farm subsidy programs. The court held that because the requested numbers assigned to farmlands would enable identification of specific locations, they were covered by [7 U.S.C. § 8791\(b\)\(2\)\(B\)](#), which requires the USDA to withhold "geospatial information." The information is therefore covered by [FOIA Exemption 3](#), which applies to records specifically exempted from disclosure by statute. The court also ruled that the USDA properly withheld numbers assigned to farm owners under [FOIA Exemption 6](#), which covers records "similar" to personnel or medical files when disclosure "would constitute a clearly unwarranted invasion of personal privacy" (*Telematch, Inc. v. USDA*).
- **\*Health:** The Eleventh Circuit applied the four-year catchall limitations period under [28 U.S.C. § 1658\(a\)](#) to a private cause of action under the Medicare Secondary Payer Act (MPSA), [42 U.S.C. § 1395y\(b\)\(3\)\(A\)](#), which does not specify a limitations period for such claims. The court held that a claim "accrues" under Section 1658(a) when the violation of a party's legal right occurred, and not when a party discovered or should have discovered the violation. As a result, the plaintiff's suit, filed six years after the occurrence of the alleged violation, was time-barred. The court disagreed with an [Eighth Circuit](#) decision that suggested Congress intended Section 1658's accrual to vary based on the cause of action (*MPSA Claims I, LLC v. Tower Hill Prime Ins. Co.*).
- **Immigration:** The Seventh Circuit upheld an Illinois law that prohibits state agencies and political subdivisions from contracting with the federal government to house immigration detainees. The court refused to invalidate the law under the Supremacy Clause based on the theories of [field preemption and conflict preemption](#). The court held that existing federal law on the detaining and housing of non-U.S. citizens, [8 U.S.C. §§ 1103 and 1231](#), do not evidence a congressional intent to remove a state's authority over its subdivisions. The court further held that these federal statutes, which express a hope or expectation that states would cooperate with federal requests to house detainees in their facilities, do not bind states to act (*McHenry County v. Raoul*).
- **Intellectual Property:** The Third Circuit set forth a three-step process for district courts to apply in deciding whether to provide injunctive relief under the [Trademark Modernization Act of 2020 \(TMA\)](#). The TMA creates a rebuttable presumption of irreparable harm favoring a plaintiff who has shown a likelihood of success on the merits of an infringement claim. The court held that a district court considering a trademark injunction must first assess the plaintiff's evidence as it relates to likely success on the merits (but not any irreparable harm suffered as a result of the infringement). If the court finds no likelihood of success, the inquiry ends and no injunction may issue. Second, if the court concludes that the plaintiff's evidence establishes likely trademark infringement, the burden shifts to the defendant to provide evidence that any resulting consumer confusion is unlikely to cause irreparable harm. Third, if the defendant successfully rebuts the presumption, which the court described as requiring only a slight evidentiary showing, then the TMA's presumption has no further effect and the burden returns to the plaintiff to show it will face irreparable harm if the injunction is not issued (*Nichino America, Inc. v. Valent U.S.A. LLC*).

- **Intellectual Property:** Joining other circuits, the Eleventh Circuit held that a plaintiff who brings a copyright infringement claim under [17 U.S.C. § 1202\(b\)\(1\) or \(3\)](#)—involving the unlawful removal or alternation of copyright management information—must show that the defendant knew, or had reasonable grounds to know, that its actions would induce, enable, facilitate, or conceal an infringement. The court concluded that it is not enough to allege that the defendant’s removal of copyright management information might make it more likely that copyright infringement would occur. Instead, the defendant must be aware of or have reasonable grounds to be aware of the probable impact of its conduct (*Victor Elias Photography, LLC v. Ice Portal Inc.*).
- **Labor & Employment:** The Ninth Circuit ruled that the Occupational Safety and Health Act (OSH Act), [29 U.S.C. § 654\(a\)](#), does not preempt certain mandates issued by the governor of Washington to address the spread of COVID-19 in the agricultural labor sector. The court observed that earlier this year, in *National Federation of Business v. Occupational Safety & Health Administration (OSHA)*, the Supreme Court stayed enforcement of an OSHA rule that mandated a COVID-19 vaccine-or-testing requirement on large private employers after concluding that the OSH Act did not authorize OSHA to issue broad public health measures. Relying on the reasoning from that decision, the Ninth Circuit ruled that none of OSHA’s existing regulatory standards can preempt a state’s public health and safety measures that respond to COVID-19 (*Flower World, Inc. v. Sacks*).
- **Tax:** The D.C. Circuit held that the House Ways and Means Committee may review former President Donald Trump’s tax returns for the years 2015 to 2020, using four-fold reasoning. First, the request for tax returns did not exceed Congress’s investigative powers because it identified a legitimate legislative purpose. Second, it did not violate separation of powers principles. Third, [26 U.S.C. § 6103\(f\)\(1\)](#), which requires the Secretary of the Treasury to release tax returns and return information to the Committee, is not facially unconstitutional because the Trump parties failed to establish there was no set of circumstances under which the statute could be constitutionally applied, or that the law lacked a plainly legislative sweep. Fourth, the Treasury Department’s intent to comply with the request did not amount to retaliation because § 6103(f)(1) mandates the turnover of information to the Committee when it seeks information under its investigative powers; thus, any motive, retaliatory or otherwise, is irrelevant (*Committee on Ways & Means v. U. S. Dep’t of the Treasury*).
- **Torts:** The Ninth Circuit considered whether a Washington State statute of repose that extinguishes medical malpractice claims after eight years barred a claim under a provision of the Federal Tort Claims Act (FTCA), [28 U.S.C. § 2401\(b\)](#), against a U.S. Navy Hospital. The Ninth Circuit joined two other circuits in ruling that, while the FTCA supersedes state statutes of limitation, it does not supplant state statutes of repose (*Bennett v. United States*).

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