

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (June 6–June 12, 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 decisions in four cases in which oral arguments were held:

- **Arbitration:** In an 8-0 ruling (with Justice Amy Coney Barrett recused), the Court held that although the employment contracts of certain airline employees who load and unload cargo from vehicles that travel across state and international borders contained arbitration provisions, these contracts are not covered by the [Federal Arbitration Act \(FAA\)](#). The FAA permits parties to contract for arbitration of disputes and, in so doing, forfeit their rights to bring suit over matters covered by the arbitration agreement, but does not apply to contracts of transportation workers “engaged in foreign or interstate commerce” (*Southwest Airlines Co. v. Saxon*).
- **Bankruptcy:** The Supreme Court unanimously held that the [Bankruptcy Judgeship Act of 2017](#) violates the uniformity requirement of the Constitution’s Bankruptcy Clause by enabling higher disbursement fees to be imposed on certain debtors in Trustee districts than for equivalent debtors in Bankruptcy Administrator districts. These districts derive

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from federal law, which establishes dual bankruptcy administration programs: the Department of Justice's Trustee Program administers proceedings for most judicial districts, while the Judicial Conference's Bankruptcy Administrator Program administers those for the remaining districts. The Court remanded the case to the Fourth Circuit to consider the appropriate remedy in the first instance (*Siegel v. Fitzgerald*).

- **Health:** In a 7-2 decision, the Court held that the Medicaid Act, which requires states to pay certain medical costs and make reasonable efforts to recoup those costs from liable third parties, permits states to seek reimbursement from the portion of a Medicaid beneficiary's private tort settlement set aside for both past *and future* medical care (*Gallardo v. Marsteller*).
- **Torts:** The Court declined to extend recognition of an implied cause of action under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* to a U.S. citizen seeking money damages against an immigration enforcement officer for alleged constitutional violations. The Court unanimously declined to extend *Bivens* to plaintiff's First Amendment retaliation claim. Six Justices agreed that *Bivens* does not create a cause of action for the plaintiff's Fourth Amendment excessive force claim (*Egbert v. Boule*).

The Court also granted certiorari in one case for its next term:

- **Civil Procedure:** The Court agreed to hear a case from the Ninth Circuit in which it is asked to consider whether the statute of limitations for bringing a claim under the *Quiet Title Act* is jurisdictional in nature, or whether it is a claims-processing rule that can potentially be waived by a party (*Wilkins v. United States*).

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.

- **Bankruptcy:** The Fourth Circuit reversed and remanded a bankruptcy court's ruling in a Chapter 11, Subchapter V bankruptcy that a debt for intentional and tortious interference could be discharged. The court reasoned that where 11 U.S.C. § 1192(2) differs from 11 U.S.C. § 523(a), based on a textual analysis and contextual review, § 1192(2) governs the specific Subchapter V discharge proceedings, and § 523(a) more generally governs the kinds of debts that may not be discharged (not the type of debtor to which such discharge exceptions apply) (*Cantwell-Cleary v. Cleary Packaging*).
- **Bankruptcy:** The Tenth Circuit affirmed a district court's dismissal of an appeal to review a bankruptcy court's conversion of a Chapter 11 reorganization to a Chapter 7 liquidation. As part of the conversion to Chapter 7, a trustee was appointed. The court held that only the trustee had authority to file an appeal on the debtor's behalf, not the attorney of the debtor's management prior to the conversion (*Bear Creek Trail v. BOKF*).
- **Civil Rights:** A divided Tenth Circuit panel dismissed a religious employer's appeal invoking the collateral order doctrine, a limited exception to the usual requirement that the circuit only review appeals from final judgments. After weighing the benefit of an immediate appeal against the costs of disrupting ongoing litigation, the circuit concluded that it lacked jurisdiction. The case involved a "ministerial exception," a constitutional affirmative defense to employment discrimination claims requiring a fact-specific inquiry into whether an employee is a "minister." The religious employer sought to defend against a former employee's race discrimination suit by asserting that he was a "minister"

for purposes of the exception. The panel concluded that the ministerial exception, while it could ultimately provide a defense to liability, would not immunize the employer from facing suit. It distinguished cases from the Third, Sixth, and Seventh Circuits as inapposite because there was no dispute in those cases that the employees qualified as ministers, and the cases addressed waiver of the ministerial exception, rather than whether it could immunize an employer from suit (*Tucker v. Faith Bible Chapel Int'l*).

- **Criminal Law & Procedure:** The Fifth Circuit held that 28 U.S.C. § 1915 did not bar petitioner's claim that was filed in state court and later removed because it was not "brought" in federal court. The circuit held that the federal *in forma pauperis* statute, which permits an inmate to bring a civil action or appeal a judgment in federal court without prepaying filing fees (unless three or more prior actions or appeals were "brought" in federal court and dismissed for frivolousness or other enumerated grounds), did not apply because the action was removed as opposed to filed directly in federal court (*Mitchell v. Goings*).
- ***Criminal Law & Procedure:** A divided Ninth Circuit panel furthered a circuit split over the meaning of § 403(b) of the First Step Act, which specifies the Act's application to pending cases under 18 U.S.C. § 924(c)(1)(C), which enhances the penalties for the commission of a "crime of violence" while armed with a firearm under certain conditions. Section 403(b) provides that the Act's amendments apply when the covered offense was "committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment." The divided panel held that a "sentence" under § 403(b) does not include one that has been vacated or otherwise rendered invalid. As a result, the majority held that the amendments made by § 403(b) applied in the resentencing of criminal defendants who were convicted and sentenced more than two decades ago for covered crimes, but whose sentences were since vacated (*United States v. Merrell*).
- **Criminal Law & Procedure:** The Eleventh Circuit held when sentencing a criminal defendant under the Armed Career Criminal Act (ACCA), a court applies the Controlled Substances Act (CSA) Schedules in place when the defendant *committed* the federal firearm possession offense for which he is being sentenced, not the version in place at the time of his conviction. The ACCA provides sentencing enhancements for a felon in unlawful possession of a firearm who has at least three prior convictions for a serious drug offense, violent felony, or both, and it incorporates the CSA Schedules (*United States v. Jackson*).
- **Election Law:** In a Voting Rights Act (VRA) case where individual voters and voting organizations contended that absentee ballots should have been printed in two languages in the 2020 election cycle, the Eleventh Circuit vacated a district court's dismissal on jurisdictional grounds, but affirmed the lower court's dismissal for failure to state a claim. The circuit court held that VRA § 203, which requires a covered state or political subdivision to comply with the requirement to print voting materials in multiple languages when language minority population thresholds are met, did not apply to the state of Georgia solely because the requirements applied to a particular county therein that met the minority threshold. Further, the panel held that VRA § 4(e), which addresses the issue of denying the right to vote on the basis of an inability to understand English, was not violated because the county provided voting materials in the required language and was not required to translate materials prepared in English but provided by the state of Georgia, a noncovered entity (*Georgia Ass'n of Latino Elected Officials v. Gwinnett County Bd. of Registration & Elections*).

- **Employee Benefits:** The Second Circuit reversed and remanded a district court ruling dismissing an insurance claim as not ripe. The plaintiff-appellant sought long-term disability benefits pursuant to the [Employee Retirement Income Security Act \(ERISA\)](#). [ERISA regulations](#) contain procedures for processing disability benefit claims, and the defendant-appellee insurance company did not provide a determination of benefits within the U.S. Department of Labor regulation's 45-day time frame. Instead, within this period, the company informed the plaintiff-appellant that review of the claim was ongoing. The district court held that the insurance plan's remedies had not been exhausted, but the circuit disagreed, emphasizing that ERISA regulations require a benefits determination, not just an intermediate process determination, within the regulatory period (*McQuillin v. Hartford Life & Accident Ins. Co.*).
- **Environmental Law:** The D.C. Circuit affirmed the district court's ruling that the National Marine Fisheries Service's changes to its fisheries management plan for tuna, swordfish, and sharks provided appropriate protection for the dusky shark. The court viewed the agency's decisions to set the bycatch limit for dusky shark to zero and its enforcement of this standard through training of fishermen to be consistent with its obligations under the [Magnuson-Stevens Act](#) (*Oceana, Inc. v. Raimondo*).
- **Food & Drug:** The D.C. Circuit upheld the Food and Drug Administration's (FDA's) denial of the petitioner's request that the agency lift its ban on the interstate sale of raw, unpasteurized butter. The court held that the ban was a lawful exercise of [Public Health Service Act](#) authority, and that the statutory definition of "butter" did not prevent the FDA from restricting the interstate sale of unpasteurized butter because of safety concerns (*McAfee v. FDA*).
- **Separation of Powers:** A divided Sixth Circuit panel rejected a petitioner's constitutional and statute-based challenges to sanctions imposed against him by the Federal Deposit Insurance Corporation (FDIC). The panel held that even assuming the petitioner was correct that both the FDIC Board and the administrative law judge who presided over his case were unconstitutionally insulated from removal, and that the petitioner had not shown how these removal protections caused him harm. The majority of the panel also decided that substantial elements supported the Board's findings that the elements of liability under [12 U.S.C. § 1818\(e\)](#) were met here, which resulted in the petitioner being removed from his position as bank executive and director, and also barred him from further participating in the affairs of any other insured depository institution (*Calcutt v. FDIC*).
- **Tax:** The Ninth Circuit upheld a lower court's dismissal of an action challenging the constitutionality of [Internal Revenue Code § 965's Mandatory Repatriation Tax \(MRT\)](#), created by P.L. 115-97, commonly referred to as the Tax Cuts and Jobs Act. Where investors in controlled foreign corporations previously were generally not obliged to pay taxes on undistributed earnings, the MRT imposed a one-time tax on certain investors' earnings after 1986 regardless of their distribution status. The taxpayers argued that the MRT was an unapportioned direct tax in violation of the Apportionment Clause, and that the MRT was a retroactive tax in violation of the Due Process Clause. The court found that the MRT was a tax on income that need not be apportioned consistent with the Sixteenth Amendment, explaining that courts have upheld the constitutionality of taxes like the MRT regardless of the difficulty of defining "income" under the Sixteenth Amendment. The panel also ruled that the MRT does not violate the Due Process Clause because it is not a wholly new tax, and serves a legitimate purpose of ensuring that shareholders of controlled foreign corporations do not receive a windfall by never paying taxes on undistributed foreign earnings using rational means (*Moore v. United States*).

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- **Trade:** The Federal Circuit upheld the lawfulness of a steel tariff of indefinite duration imposed by the President, concluding it was authorized by [Section 232 of the Trade Expansion Act of 1962](#). Section 232 permits the President to adjust imports when he concurs with the Secretary of Commerce’s determination that the imported articles are “in such quantities or under such circumstances as to threaten to impair the national security,” and to “determine the nature and duration” of the adjustment. While the panel held that the Secretary’s national security determination was reviewable, the court was not persuaded by the plaintiffs’ argument that the determination was invalid on account of the identified threat not being imminent. The court also ruled that Section 232 does not limit the President to imposing tariffs for a set term (*USP Holdings, Inc. v. United States*).
- **Veterans:** In an action under the [Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#), the Ninth Circuit vacated a lower court’s summary judgment in favor of defendants. The plaintiff was a longshore worker who left his job to serve in the military for nine years, after which he sought a position for which he would have been qualified but for the military service. When he was denied the promotion, he filed suit alleging a violation of USERRA, which protects military servicemembers in reemployment. The circuit agreed that he had demonstrated his entitlement to USERRA benefits, memorialized in the collective bargaining agreement, and remanded to the district court with instructions to consider this entitlement together with the statute’s five-year limit on covered military service, and any exceptions to that limit. The circuit also distinguished a Seventh Circuit case interpreting “benefit of employment” as applying to employees regardless of military status from the facts in the subject case, where the benefits were intended to implement statutory USERRA protections (*Belaustegui v. Int’l Longshore & Warehouse Union*).

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