

# Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (December 26, 2023–January 1, 2024)

January 2, 2024

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

The Supreme Court did not issue any opinions or agree to hear any new cases last week.

## 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.

- **Criminal Law & Procedure:** The Ninth Circuit reversed a former Member of Congress’s criminal conviction for making false statements to federal agents under [18 U.S.C. § 1001\(a\)\(2\)](#), deciding that the venue for his criminal trial was improper. As part of an investigation into whether the Member had received illegal campaign contributions from a foreign national through conduit donors in Los Angeles, the Member was interviewed at his home in Nebraska and his lawyer’s office in Washington, DC. The

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Member was charged under Section 1001(a)(2) with making false statements to federal agents during those interviews. Although the case was brought in the Central District of California rather than either of the locations where the allegedly false statements were made, the trial court held that the venue was proper because the statements had an effect on a federal investigation occurring within the district. The circuit court decided that this effects-based test for venue was inconsistent with the text of Section 1001(a)(2) and constitutionally invalid. The circuit panel's reversal of the Member's conviction was without prejudice to a possible retrial in a proper venue (*United States v. Fortenberry*).

- **Federal Courts:** The Eighth Circuit affirmed a district court's decision that a suit brought by patients against a health care provider in state court was not removable to federal court under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). For a party to constitute a federal officer under the removal statute, the court held that the party must perform a basic governmental task by way of a federal entity's delegation of legal authority. The court concluded that the receipt of federal subsidies in support of the provider's creation and operation of an online patient portal did not cause the provider to function as a federal instrumentality (*Doe v. BJC Health Sys.*).
- **Labor & Employment:** A three-judge Ninth Circuit panel vacated as moot an earlier ruling over the lawfulness of a since-rescinded executive order mandating that federal contractors ensure their workforces are vaccinated against COVID-19. President Biden had issued the order under the [Federal Property and Administrative Services Act of 1949](#), which gives the President general authority to prescribe contracting policies. In the earlier ruling, which had created a circuit split, a three-judge Ninth Circuit panel had allowed enforcement of the order, rejecting arguments that the order violated the major questions doctrine, which requires Congress to speak clearly if it wants an agency to have authority on an issue of major political or economic significance. Following that earlier ruling, the contractor mandate was rescinded and the Supreme Court vacated on mootness grounds three judgments in similar vaccine mandate cases. The Ninth Circuit panel decided that these developments warranted dismissal of the present case and vacatur of the opinion upholding the contractor mandate's lawfulness (*Mayes v. Biden*).
- **Property:** Following the recusal of a panel member, the Ninth Circuit withdrew the panel's earlier opinion and issued a new opinion reaching the same conclusion in a case involving the Alaska Railroad Corporation, a state-owned corporation that operates Alaska's railroad system. As in the withdrawn opinion, the new opinion held that the Alaska Railroad Corporation could deny homeowners in an Anchorage subdivision access to a portion of an airstrip next to the railroad. The court ruled that the federal government had reserved a right-of-way over a corridor of land alongside the Alaska Railroad track when it enacted the [1914 Alaska Railroad Act](#) to authorize the Alaska Railroad's construction. The federal government later transferred most of its property rights over the railroad to the Alaska Railroad Corporation. The court ruled the conveyed rights enabled the corporation to deny homeowners access to portions of the airstrip that overlapped with the railroad's right-of-way (*Alaska R.R. Corp. v. Flying Crown Subdivision Addition No. 1 & Addition No. 2 Prop. Owners Ass'n*).

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