

# Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (February 19–February 25, 2024)

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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 vacated its [previously issued stay](#) in a pending case and issued decisions in two cases for which it previously heard oral arguments:

- **Bankruptcy:** The Court vacated an earlier administrative stay issued by Justice Samuel Alito and denied an application submitted by 144 claimants, who are former Boy Scouts who were sexual abuse victims, seeking to halt the implementation of a bankruptcy plan for the Boy Scouts of America (BSA) until the Court decides another pending case, [Harrington v. Purdue Pharma, L.P.](#). That case asks whether the Bankruptcy Code authorizes judicial approval of nonconsensual, nondebtor third-party releases. The Bankruptcy Court for the District of Delaware approved a bankruptcy plan for BSA that allegedly would resolve over 82,000 claims of sexual abuse, including those brought forth by the claimants, with a settlement trust fund exceeding \$2.46 billion. The plan includes judicially approved releases from liability for nondebtor affiliated third-party organizations such as churches and schools, some of whom contributed to the trust. As a

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result of the denial, the bankruptcy plan may continue to go forward (*Lujan Claimants v. Boy Scouts of America*).

- **Criminal Law & Procedure:** The Court unanimously reversed a Supreme Court of Georgia judgment and barred the state from retrying a defendant on an acquitted charge under the [Fifth Amendment’s Double Jeopardy Clause](#). In the original trial, the court accepted conflicting verdicts from the jury regarding the same underlying homicide, which found the defendant “guilty but mentally ill” on a felony murder charge and found him “not guilty by reason of insanity” on a malice-murder charge. The Supreme Court of Georgia ordered a retrial after vacating both verdicts as “repugnant” under Georgia state law because reconciling them would require the defendant to have had two different and incompatible mental states while committing the same crime. The defendant argued that the Double Jeopardy Clause precluded a retrial for the crime that had been acquitted by reason of insanity. The Court agreed and held that the Double Jeopardy Clause barred a retrial on the acquitted charge (*McElrath v. Georgia*).
- **Maritime Law:** The Court unanimously reversed a Third Circuit panel decision in a case involving a maritime insurance dispute between a boat owner and an insurance company and held that choice-of-law provisions in maritime contracts are presumptively enforceable. The Court—citing treatises, circuit court opinions, and Supreme Court opinions from the 19<sup>th</sup> century—noted that long-standing precedent establishes a federal maritime rule that choice-of-law provisions will be enforced with limited exceptions. The Court declined to establish a new exception—that the choice-of-law provision should yield to the law of the state that has “a materially greater interest” in the case or issue in question—explaining that it would undermine the uniformity and clarity that the federal rule is intended to promote (*Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*).

## 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 nonuniform application of the law among the circuits.

- **Civil Rights:** The D.C. Circuit held that the three-year statute of limitations for personal injury actions under D.C. law, [D.C. CODE § 12-301](#), applies to lawsuits brought under [Title III of the Americans with Disabilities Act](#) (ADA) and the [Rehabilitation Act](#). A medical student challenging his expulsion brought ADA and Rehabilitation Act claims. Since neither law contains a statute of limitations, the D.C. Circuit applied “settled practice” to adopt a local time limitation not inconsistent with federal law or policy. The court, which had ruled in 2022 that D.C.’s statute of limitations for personal injury actions applied to discrimination claims under Title VI of the Civil Rights Act, reasoned that personal injury torts were the most analogous to civil rights claims and stressed the importance of uniform statutes of limitations for civil rights laws. The court held that the same statute of limitations was appropriate to enforce civil rights under the ADA and Rehabilitation Act (*Abreu v. Howard University*).
- **Copyright:** The Fourth Circuit affirmed in part and reversed in part a jury verdict that found an internet service provider (ISP) liable for copyright infringement of thousands of musical works downloaded from or distributed by the ISP’s customers over the internet. The panel affirmed the jury’s finding that the ISP committed contributory copyright infringement based on the infringing conduct of its customers because the ISP knew of the infringements and continued to provide internet service to the known infringers. However, the panel reversed the trial court’s decision that the ISP was also vicariously

liable for its customers' copyright infringements. The panel held that the ISP could not be vicariously liable because it did not receive a direct financial benefit from the infringing activities. The panel remanded to the district court to reconsider the damages owed to the copyright holders (*Sony Music Ent. v. Cox Commc'ns, Inc.*).

- **Criminal Law & Procedure:** The First Circuit held that the government did not constructively amend at trial the [Hobbs Act](#) robbery count contained in the indictment of the defendant. A constructive amendment occurs when the government's evidence, arguments, or statements during trial, or the court's jury instructions, alter the offense charged in the grand jury indictment. Here, the court concluded that the government's focus at trial on the victim's home business as the target of the robbery, and not the victim himself, did not amount to constructive amendment because it aligned with the indictment and, in any event, the identity of the target is not a statutory element under the Hobbs Act (*United States v. Katana*).
- **Employment Law:** The Ninth Circuit upheld the National Labor Relations Board's (Board's) determination that, pursuant to the National Labor Relations Act (NLRA), a Nevada employer was obligated to collect union dues from employees and remit those dues to the union even after the collective bargaining agreement (CBA) expired. The Board has changed its position multiple times in recent years on whether the NLRA permits an employer to unilaterally cease collecting dues after a CBA expires. In affirming the Board's changed interpretation, the Ninth Circuit noted that the Board acknowledged that it was changing its interpretation and provided reasoned support for the change. The panel further explained that the NLRA is ambiguous on the issue and then upheld the NLRB's permissible interpretation of the statute pursuant to the [Chevron doctrine](#) (*Valley Hosp. Med. Ctr., Inc. v. NLRB*).
- **Employment Law:** In a case related to the above-described *Valley Hospital Medical Center, Inc. v. NLRB* case, the same Ninth Circuit panel held that the employees' union dues authorization forms were valid under the Taft-Hartley Act despite failing to reference specific provisions from the statute. The panel determined that the statutory provision, [29 U.S.C. § 186\(c\)\(4\)](#), regarding the authorization of the dues checkoff does not dictate that specific language be used or included in the written authorization that employees provide to their employers. Therefore, the court held that the failure of the written authorizations to reference statutory provisions establishing when the employees may revoke an authorization did not render those authorizations invalid (*NLRB v. Valley Health Sys., LLC*).
- **Federal Courts:** The Third Circuit affirmed a federal district court's decision to remand a suit to state court after the defendant (a university hospital health system) attempted to remove the matter to federal court under the [federal-officer removal statute](#). The statute permits private persons assisting federal officers in the performance of their official duties to remove a case filed in a state tribunal to federal court. The defendant argued that, because it operated an electronic health records portal in order to be eligible for certain Medicare reimbursements pursuant to federal law, it was entitled to remove a lawsuit concerning the operation of that portal to federal court. The panel concluded that the hospital health system was not entitled to remove the suit to federal court because it was not operating the patient portal "on behalf of the government"; it was merely conducting its own business in a manner to comply with federal regulations (*Mohr v. Tr. of the Univ. of Pa.*).

## Author Information

Jimmy Balser  
Legislative Attorney

Daniel T. Shedd  
Legislative Attorney

Rosemary W. Gardey  
Legislative Attorney

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