

# Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (May 28–June 2, 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 issued decisions in three cases for which it heard arguments:

- **Banking:** In a 9-0 decision, the Court vacated a Second Circuit ruling that the [National Bank Act of 1864](#) preempts New York’s interest-on-escrow law as it applies to federally chartered banks. The Court held that the lower court did not appropriately apply the [preemption standard](#) set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and prior Court rulings. The Court remanded the case for the lower court to consider whether the challenged state law “prevents or significantly interferes with” federally chartered bank powers (*Cantero v. Bank of Am., N. A.*).
- **Criminal Law & Procedure:** In a 6-3 decision, the Court held that the Ninth Circuit erred when it granted habeas relief to a death-row inmate. The defendant alleged that his [Sixth Amendment](#) rights were violated based on ineffective assistance of counsel during criminal sentencing. The Court reinstated the inmate’s capital sentence after deciding the

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circuit court erred in its application of the standard for reviewing ineffective assistance of counsel claims under *Strickland v. Washington* (*Thornell v. Jones*).

- **Speech:** The Court unanimously ruled that the National Rifle Association (NRA) plausibly alleged that a New York state official violated the organization's [First Amendment](#) rights when she issued guidance letters urging state-regulated banks and insurance companies to stop doing business with the organization in the wake of a school shooting. The Court reaffirmed earlier rulings that the First Amendment bars government officials from using their power to punish or suppress speech either directly or through private intermediaries. The Court remanded the case so the suit could proceed (*Nat'l Rifle Ass'n of Am. v. Vullo*).

The Court also granted certiorari to consider a case next term:

- **Environmental Law:** The Court agreed to hear a case from the Ninth Circuit on whether permits authorizing the discharge of wastewater under the [Clean Water Act's \(CWA's\) National Pollutant Discharge Elimination System](#) are enforceable only if they specify particular discharge limits or whether it is enough for the permits to include generalized prohibitions on violating CWA water quality standards (*City & Cnty. of S.F. v. EPA*).

## Decisions of the U.S. Courts of Appeals

- **Employee Benefits:** The Ninth Circuit held that the [Employee Retirement Income Security Act \(ERISA\)](#), which generally [preempts](#) "all State laws insofar as they . . . relate to" a covered employee benefit plan, preempted state-law contract and fraud claims based on an out-of-network health care provider's calls to a plan administrator to verify plan coverage and obtain preauthorization for medical services. There was no dispute in the case that the patients and their treatment were covered by the benefit plan, but payment was denied because the provider engaged in fee forgiving—a practice where the provider fails to collect deductibles, co-pays, or other financial contributions the participant is required to pay under the plan. The plaintiff alleged, however, that administrator's failure to pay breached an independent contractual obligation incurred by the provider's communications with the plan administrator. The court held that recovery through a state breach of contract claim was preempted by ERISA (*Bristol SL Holdings, Inc. v. Cigna Health & Life Ins. Co.*).
- **Immigration:** In consolidated cases, the Second Circuit decided that lawful permanent residents subject to mandatory detention under [8 U.S.C. § 1226\(c\)](#) during the pendency of removal proceedings are constitutionally entitled to a bond hearing when detention becomes unreasonably prolonged. The circuit court observed that the Supreme Court had decided that due process rights attached to aliens in removal proceedings and may limit the time that such aliens may be detained pending removal. The Second Circuit held that these constitutional considerations preclude indefinite detention under Section 1226(c) without a bond hearing. The court decided that a case-by-case analysis was needed to determine when an alien's detention had become unreasonably prolonged and required a bond hearing, where the government must prove by clear and convincing evidence that the alien's continued detention was necessary (*Black v. Decker; G.M. v. Decker*).
- **Immigration:** Joining four other circuits, the Tenth Circuit rejected a constitutional equal protection challenge to [8 U.S.C. § 1326](#), which criminalizes unlawful alien reentry following removal from the United States. The criminal defendant alleged that Section 1326, while facially neutral as to race, was impermissibly motivated by discriminatory animus toward Mexicans and Central and South Americans. The defendant's equal

protection argument significantly relied on legislative history surrounding a predecessor statute to Section 1326 that was enacted in 1929. Applying judicial precedent holding that constitutional defects caused by discriminatory animus can be cured by later enactments untainted by animus, the court held that the 1952 enactment of Section 1326 (along with amendments made to that law) were the proper point of reference for analysis of the claim. The court declined to decide the appropriate standard of review of race-based equal protection challenges raised in the immigration context, concluding that the defendant's argument failed regardless of whether it applied the standard advanced by the defendant or the more deferential standard advanced by the government (*United States v. Amador-Bonilla*).

- **Labor & Employment:** A divided D.C. Circuit panel held that [Section 401\(c\)](#) of the Labor-Management Reporting and Disclosure Act of 1959, which affords union office candidates the ability to disseminate their campaign material to union members, governs a candidate's request to buy campaign advertising space in a union magazine. Section 401(c) requires a covered union "to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing." The majority held that the union candidate's magazine publication request was covered by Section 401(c)'s application to requests to distribute campaign literature "by mail or otherwise." The majority remanded so the district court could determine whether the request was "reasonable" under Section 401(c). The majority also held that requiring publication of the campaign material at the candidate's expense would not constitute compelled speech in violation of the First Amendment (*Noble v. Nat'l Ass'n of Letter Carriers, AFL-CIO*).
- **Sovereign Immunity:** The D.C. Circuit affirmed the lower court's dismissal on sovereign immunity grounds of a journalist's suit seeking records related to the use of outside consultants by the House Committee on Oversight and Reform (now named the House Committee on Oversight and Accountability) during a congressional investigation. Absent a waiver, claims against the federal government and its actors are generally barred under the doctrine of sovereign immunity. The plaintiff's suit here turned on D.C. Circuit caselaw recognizing that sovereign immunity did not attach when a claim was brought alleging a common-law right of access to public records. The circuit court held that the common-law right did not apply because the requested documents were not public records that the Committee had a duty to disclose. Because the suit was barred on sovereign immunity grounds, the court declined to decide whether the suit was also barred by the [Speech or Debate Clause](#) (*Schilling v. U.S. House of Representatives*).

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