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THE YEAR IN LAW

November 2014

November 3: The Supreme Court hears argument in *Zivotovsky v. Kerry*, which presents the question whether Congress can allow American citizens born in Jerusalem to list “Israel” as their birthplace on their passports, notwithstanding the Executive Branch’s long-held position of neutrality on sovereignty over Jerusalem. • The State of Maine reaches a settlement with Kaci Hickox, a nurse who treated Ebola patients in West Africa and refused to comply with a state-ordered quarantine. Under the terms of the settlement, Hickox is allowed to move freely in public, but must submit to health monitoring and notify health officials if she develops any Ebola symptoms.

November 4: The D.C. Circuit hears oral argument in *Klayman v. Obama*, a challenge to the NSA’s bulk phone-surveillance program. The ruling under review was issued by U.S. District Judge Richard Leon, and declared that the NSA’s program “almost certainly” violates the Constitution.

November 5: Kansas voters choose to retain Kansas Supreme Court Justices Eric Rosen and Lee Johnson, despite a campaign to oust them based on their decision to overturn the death sentences of two brothers convicted of murder. To date, no Kansas Supreme Court justice has ever lost in a retention election. • The Department of Justice discloses emails in which Attorney General displays contempt for Rep. Darrell Issa, who is conducting an investigation into a gun-tracking operation. In the emails, Holder asserts that “Issa and his idiot cronies” are attempting to “cripple ATF and suck up to the gun lobby.” • The Federal Circuit reprimands Edward Reines, a patent litigator, for attempting to solicit clients by publicizing an email sent to him by former Chief Judge Randall Rader praising Reines’s advocacy. The disclosure of the email had led to Judge Rader’s resigning from the bench. • The Supreme Court hears oral argument in *Yates v. United States*, which presents the question whether undersized red grouper count as “tangible objects” under a provision of federal law criminalizing the destruction of “any record, document, or tangible object” with the intent to obstruct an investigation. • Chief Justice John Roberts gives a speech praising the impending 800th birthday of the Magna Carta, but cautioning litigants not to cite it in briefs or at argument because “[w]e like our authorities a little more current.”

November 6: U.S. District Judge Douglas P. Woodcock delays the sentencing of two former college friends of Dzhokhar Tsarnaev, the Boston Marathon bomber, based on the Supreme Court’s consideration of *Yates v. United States* (the undersized red grouper case). The two friends were charged under the statutory provision at issue in that case for their obstruction of the investigation into Tsarnaev. • In a divided opinion, the U.S. Court of Appeals for the Sixth Circuit issues an opinion upholding prohibitions on same-sex marriage in Kentucky, Michigan, Ohio, and Tennessee. The Supreme Court will later grant certiorari in these cases and reverse, finding that the Constitution guarantees marriage equality.

November 7: The White House announces that the President will be nominating Loretta Lynch, the U.S. Attorney for the Eastern District of New York, to be the next Attorney General. • U.S.

Bankruptcy Judge Steven Rhodes issues an opinion upholding the City of Detroit's municipal bankruptcy plan. • The Supreme Court grants certiorari in *King v. Burwell*, which addresses whether consumers can receive premium tax credits under the Affordable Care Act to help defray the costs of insurance purchased through a federal insurance exchange. The case is viewed as a major challenge to the continued implementation of the Affordable Care Act. • New York judge Robert Stolz refuses to dismiss a criminal accounting fraud case brought against former employees of the law firm Dewey & LeBoeuf.

November 12: The family of Thomas Eric Duncan, the first Ebola patient in the United States, reaches a settlement with the Texas hospital that initially treated him by giving him antibiotics and then releasing him. Duncan returned to the hospital days later, much sicker, and eventually passed away. • An advocacy group launches an advertising campaign called "Fix the Court," which criticizes the Supreme Court as the "most powerful" and "least accountable" institution in the United States government.

November 13: Don Blankenship, the former CEO of Massey Energy Company, is indicted in federal court on charges that he conspired to violate federal mine safety laws prior to a mine explosion that killed 29 coal miners in 2010.

November 14: The U.S. Court of Appeals for the D.C. Circuit upholds the accommodation process that allows religious employers to opt out of the Affordable Care Act's contraceptive mandate. The court concludes that the accommodation process does not violate the Religious Freedom Restoration Act both because it does not substantially burden the organizations' religious beliefs and because it is the least restrictive means of satisfying the government's compelling interest in ensuring that women have access to contraceptive coverage.

November 17: The Herald Fund SPC and Primeo Fund agree to return \$497 million that they received from investing with Bernard Madoff, bringing Madoff's investors' recovery above \$10 billion. Madoff is currently serving a 150-year prison sentence. • In an interview with the New York Times, Attorney General Eric Holder predicts that a jurisdiction in the United States will one day execute an innocent person, if that has not already happened.

November 18: Speaker of the House John Boehner announces that the House has retained George Washington University law professor Jonathan Turley to represent the House in its upcoming suit against President Obama for allegedly overstepping his authority in implementing the Affordable Care Act. Turley is third lawyer retained by the House, after previous attorneys withdrew from the case.

November 19: The Department of Justice announces that it collected nearly \$25 billion in criminal and civil penalties in the previous budget year. The amount is more than triple the amount collected the previous year.

November 20: President Obama announces executive actions that will allow more than four million immigrants who are not lawfully present in the United States to remain in the country and receive an opportunity to apply for work permits.

November 21: The House of Representatives files *House v. Burwell*, a lawsuit challenging the Administration's implementation of the Affordable Care Act. Specifically, the suit challenges the Administration's decisions to delay implementation of the employer mandate and to make certain advance payments of federal financial assistance to individuals purchasing health coverage on the insurance exchanges.

November 24: St. Louis County prosecuting attorney Robert McCulloch announces that a grand jury found no probable cause to charge Ferguson, Missouri police officer Darren Wilson in connection with the shooting death of Michael Brown. Shortly following the announcement, violent protests break out in Ferguson.

November 26: Justice Ruth Bader Ginsburg undergoes heart surgery to address a blockage found in her right coronary artery. She returns to court days later for oral argument.

December 2014

December 1: The Supreme Court hears oral argument in *Elonis v. United States*, a constitutional challenge to Anthony Elonis's 2011 conviction for making threats on Facebook against his estranged wife. • President Obama pledges support for a nationwide conversation about race and police enforcement, after participating in several meetings relating to events in Ferguson (see November 24 entry).

December 3: A Staten Island grand jury declines to indict officer Daniel Pantaleo in connection with the death of Eric Garner. Garner died of a heart attack after being placed in a chokehold by Pantaleo. The decision not to indict touches off a wave of protests nationwide. • Texas and 16 other states file a lawsuit challenging President Obama's executive actions on immigration (see Nov. 20 entry), claiming that the President's actions "trample[] the U.S. Constitution's Take Care Clause and federal law.

December 4: The Department of Justice announces that its probe of the Cleveland Division of Police has revealed that the Division has a pattern and practice of using excessive force, both in firing weapons and in using non-lethal force. • Assistant Attorney General Leslie Caldwell announces that the Department of Justice is creating a dedicated cybersecurity unit to ensure that electronic surveillance tools are properly used. • A New York appeals court declines to grant habeas corpus to "Tommy," a chimpanzee being held in a cage at a business in upstate New York. The court concludes that "a chimpanzee is not a 'person' entitled to the rights and protections afforded by the writ of habeas corpus."

December 5: The Supreme Court grants review in *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, which presents the question whether a state can refuse to issue a specialty license plate because the message on the plate may be offensive.

December 8: Columbia Law School announces that it will allow students to reschedule final exams if they feel traumatized by the grand jury decisions in the Eric Garner and Michael Brown cases (see entries for Nov. 24 and Dec. 3). • The Supreme Court declines to grant review in BP's challenge to its class action settlement in connection with the Deepwater Horizon oil rig

explosion. • Portland, Oregon announces that it has sued Uber, a popular ride-hailing application, seeking to halt the company's operations in the city.

December 9: Senate Democrats issue a report concluding that interrogation techniques employed by the CIA after the September 11, 2011 attacks were ineffective, that the management of the interrogation program was flawed, and that the program was "far more brutal" than previously acknowledged. Former CIA officials release an op-ed in response, calling the report a "one-sided study marred by errors of fact and interpretation."

December 10: The U.S. Court of Appeals for the Second Circuit issues an opinion overturning the convictions of hedge fund managers Anthony Chiasson and Todd Newman. The opinion is widely viewed as a setback for U.S. Attorney Preet Bharara, who had secured dozens of convictions in a multiyear crackdown on insider trading on Wall Street.

December 16: U.S. District Judge Arthur Schwab rules that President Obama's executive actions on immigration (see Nov. 20 entry) are unconstitutional, concluding that the President's "unilateral legislative action violates the separation of powers provided for in the United States Constitution as well as the Take Care Clause." • Justices Antonin Scalia and Elena Kagan are pictured together at a hunting lodge, along with retired U.S. District Judge Charles Pickering and Mississippi Secretary of State Delbert Hosemann.

December 17: The Supreme Court declines an emergency request by Arizona officials seeking to prohibit the issuance of state driver's licenses for young immigrants who are allowed to remain in the country in light of President Obama's executive actions on immigration (see Nov. 20 entry). • President Obama announces that the United States will begin discussions to reestablish diplomatic relations with Cuba, will review Cuba's designation as a State Sponsor of Terrorism, and will take steps to increase travel, commerce, and the flow of information to and from Cuba.

December 18: The Federal Communications Commission renews the license of a radio station owned by Washington Redskins owner Daniel Snyder, dismissing a petition urging the agency not to renew the license because it repeatedly uses the team's name on-air, which (according to the petition) is a racial slur. • The U.S. Court of Appeals for the Sixth Circuit invalidates a federal law prohibiting gun ownership for anyone "adjudicated as a mental defective or who has been committed to a mental institution," concluding that the law violates the Second Amendment. • A report released by the Death Penalty Information Center reveals that America executed 35 prisoners in 2014, representing the lowest number of executions in 20 years. The report also shows that only 72 people were sentenced to death in 2014, which is the lowest number in 40 years. • The Indiana Supreme Court upholds the state's public intoxication law, which imposes a criminal penalty on someone who "harasses, annoys, or alarms another person" while intoxicated in public. The court decides to "read a reasonableness standard into" the statute "when analyzing the term 'annoys.'" • Nebraska and Oklahoma file an original action in the Supreme court challenging Colorado's decision to legalize marijuana use. The states claim that Colorado's actions violate the Supremacy Clause and create negative externalities in neighboring states.

December 22: Sony Pictures Entertainment sends a letter to Twitter, Inc. acting it to suspend the account of an indie songwriter who posted Sony documents stolen in a cyberattack and leaked online.

December 23: The Food and Drug Administration ends its lifetime ban on blood donations from gay and bisexual men, announcing a new policy allowing donations from men if they have not had sex with men in more than a year.

December 24: A report from the Brookings Institution reveals that President Obama's judicial confirmation rate over the first six years of his Presidency was 92%, outpacing the 84% confirmation rate for President George W. Bush and the 89% rate for President Bill Clinton. The report also shows that President Obama has had 307 judicial nominations confirmed, compared to 324 during George W. Bush's term in office. • U.S. District Judge Beryl Howell dismisses a lawsuit filed by Maricopa County Sheriff Joe Arpaio to challenge President Obama's executive actions on immigration (see Nov. 20 entry). The opinion concludes that Sheriff Arpaio lacks standing to challenge the actions, disagreeing with a previous opinion issued by a district court in Pennsylvania (see Dec. 16 entry).

December 26: The Dublin High Court rules that removing life support from a 26-year-old woman who is both clinically brain-dead and pregnant does not violate the country's constitutional ban on abortion.

December 29: A criminal defense lawyer in Colorado announces that he will offer a \$1,000 college scholarship to a high school senior who provides a detailed account of a situation in which he or she drove while intoxicated, and outlines the concrete steps the student will take to ensure that he or she will not drive while intoxicated in the future.

December 31: Chief Justice John Roberts issues his year-end report on the federal judiciary, in which he announces that all Court filings will be placed online starting in 2016. • Maryland Governor Martin O'Malley announces that he will commute the capital sentences of the state's final four inmates on death row. The state had abolished the death penalty in 2013.

January 2015

January 5: A member of the Ferguson grand jury (see Nov. 24 entry) files suit challenging a lifetime gag order placed on the grand jury proceedings. • Nazih Abdul-Hamed al-Ruqai, an alleged al-Qaeda operative accused of planning 1998 bombings of U.S. embassies in Kenya and Tanzania, dies 10 days before the scheduled start date of his trial in a federal district court in Manhattan. • The trial of Dzhokhar Tsarnaev, the Boston Marathon bomber, begins in federal district court in Massachusetts.

January 6: U.S. District Judge James R. Spencer sentences former Virginia Governor Bob McDonnell to two years in prison after his convictions of conspiracy and fraud for accepting loans and lavish gifts in exchange for helping a donor's business.

January 7: U.N. Secretary-General Ban Ki-moon announces that Palestine will have a seat at the International Criminal Court starting in April.

January 8: The Connecticut Supreme Court rules that a 17-year-old girl suffering from a treatable form of cancer must undergo chemotherapy against her will and the wishes of her mother. The state had taken the girl into custody after the girl and her mother objected to treatment.

January 9: The Supreme Court dismisses *Chen v. Mayor and City Council of Baltimore*, a case it had granted for review, based on Chen's failure to file a merits brief. Chen had disappeared after his case had been granted. • Ohio announces it will no longer use midazolam in its lethal injection protocol, and will instead resume using sodium thiopental and pentobarbital. In June, the Supreme Court will issue an opinion upholding Oklahoma's use of midazolam.

January 12: President Obama announces a package of legislative proposals aimed at safeguarding data privacy in education, energy, and the tech sector.

January 14: U.S. District Judge George O'Toole refuses to suspend jury selection in the trial of Dzhokhar Tsarnaev, the Boston Marathon bomber, in light of terrorist attacks at the Charlie Hebdo offices in Paris.

January 14: The U.S. Court of Appeals for the Ninth Circuit upholds baseball's exemption from the antitrust laws, labeling it "one of federal law's most enduring anomalies," but one that only Congress or the Supreme Court can fix.

January 16: The Supreme Court grants review in *Obergefell v. Hodges* and three other cases arising from the Sixth Circuit (see Nov. 6 entry) addressing whether the Constitution guarantees same-sex couples the right to marry.

January 20: The Supreme Court issues its opinion in *Holt v. Hobbs*, concluding that federal law permits a Muslim inmate to grow a half-inch beard. The Court rejects the prison's argument that the beard ban is necessary to prevent inmates from hiding contraband in their facial hair, noting that the prison permits quarter-inch beards, and that more than 40 other prisons permit half-inch beards. • A New York woman reaches a \$134,000 settlement with the United States and a DEA agent based on the agent's impersonating her on Facebook without her permission. The woman's phone had been seized during her arrest for participation in a cocaine distribution ring, and the DEA agent then created a Facebook profile to try to lure her criminal associates.

January 21: Individuals protesting the Supreme Court's *Citizen United* ruling disrupt oral arguments at the Supreme Court. The protest marks the group's second successful effort in the past year.

January 23: The Supreme Court grants review in *Glossip v. Gross*, a challenge to Oklahoma's use of midazolam in its three-drug lethal injection protocol (see Jan. 9 entry). Days later, the Oklahoma Attorney General asks the Supreme Court to postpone three p. • ending executions in light of its consideration of Oklahoma's protocol. • The NFL hires Ted Wells to issue a report on "Deflategate," the controversy over whether the New England Patriots altered footballs during the AFC Championship Game against the Indianapolis Colts.

January 28: The Senate Judiciary Committee holds a hearing on Loretta Lynch's nomination to serve as Attorney General. • U.S. District Judge Jed Rakoff resigns from the Justice Department's National Commission on Forensic Science in protest, after being told that the Commission will not examine how scientific evidence is shared in the discovery phase of trial preparation. Two days later, Judge Rakoff returns to the Commission after DOJ agrees to allow panel members to raise questions about discovery.

January 29: The Obama Administration announces that it has no intention of giving the Guantanamo Bay naval base back to Cuba, even though the Administration remains of the view that the prison at the base should be closed.

February 2015

February 2: Justice Elena Kagan states that she is "conflicted" about whether the Supreme Court should allow cameras in the courtroom, noting that "[t]here's some reason to be a little bit careful about going down this road." • The White House proposes a 5% rise in the budget for the Department of Justice, to \$28.7 billion.

February 3: The House of Representatives holds its 56th vote to repeal the Affordable Care Act. • The British House of Commons votes to legalize "three-parent babies," or in vitro fertilization procedures in which fertility labs use genetic material from a mother, father, and female donor.

February 4: California Attorney General Kamala Harris appeals a district court decision overturning the state's two-year ban on sales of foie gras. • Senators Lamar Alexander and Mike Lee introduce a resolution that would allow the Senate to confirm Supreme Court justices with a simple majority. • A jury in Manhattan convicts Ross Ulbricht of seven criminal charges in connection with his running Silk Road, an online drug bazaar that accepted payment in Bitcoin. • The FCC announces a new net neutrality proposal, which would treat mobile and fixed broadband providers like utilities. • Bobby Chen, whose Supreme Court case was dismissed based on his failure to file a merits brief (see Nov. 9 entry), resurfaces by filing a rehearing petition in his case.

February 9: Residents of Ferguson, Missouri file a federal lawsuit claiming that the city is violating the Constitution by jailing individuals in unsanitary conditions based on their inability to pay outstanding fines for misdemeanors. • Alabama Chief Justice Roy Moore orders probate judges to refuse to issue marriage licenses to same-sex couples, claiming that judges in the state are not bound by a federal district court ruling invalidating the state's ban on same-sex marriages. The Supreme Court had previously issued an order permitting the district court ruling to take effect. • In an interview with Vox, President Obama calls on the Senate to eliminate routine use of the filibuster.

February 11: The trial of Eddie Ray Routh, the man accused of killing "American Sniper" Chris Kyle, begins in Texas court. • In an interview with BuzzFeed, President Obama pushes back on the claim that he had concealed his true position on same-sex marriage during the 2008 campaign. David Axelrod, the President's former top political strategist, had recently published

a book stating otherwise. • The Obama Administration awards the Medal of Valor to law-enforcement officials who worked on the Boston Marathon bombing case, as well as first responders on the scene of a 2012 shooting at a Wisconsin Sikh temple.

February 12: FBI Director James Comey states that all Americans carry various biases with them, and that some law enforcement officials become jaded due to their dealings with criminals.

February 17: U.S. District Judge Andrew Hanen issues a ruling temporarily blocking the implementation of President Obama's executive actions on immigration, granting Texas's request for a temporary injunction (see Nov. 20 entry).

February 19: U.S. District Judge Virginia Kendall rules that the Chicago Cubs may continue to install large, new outfield signs near Wrigley Field, rejecting a request to halt the construction filed by owners of rooftop clubs near the ballpark that sell tickets to fans to allow them to watch Cubs games from across the street.

February 23: A federal jury finds that the Palestinian Authority and the Palestine Liberation Organization liable for supporting six terrorist attacks in Israel in the early 2000s, and orders the groups to pay \$218.5 million to the victims' families. • The Supreme Court denies Bobby Chen's rehearing petition, which sought to reopen his case (which had been dismissed based on his failure to file a merits brief, see Nov. 9 entry).

February 24: Attorney General Eric Holder announces that the Justice Department will not bring federal criminal charges against George Zimmerman for his involvement in the 2012 shooting death of Trayvon Martin.

February 25: The Supreme Court issues its opinion in *Yates v. United States*, concluding that undersized red grouper are not "tangible objects" under federal criminal law. Justice Kagan's dissent noted that a law criminalizing the destruction of undersized red grouper may be foolish, but judges "are not entitled to replace the statute Congress enacted with an alternative of our own design."

February 26: The Senate Judiciary committee votes, 12-8, to advance to the Senate floor the nomination of Loretta Lynch to be Attorney General.

March 2015

March 1:

April 2015

April 1:

May 2015 (SCOTUS)

June 2015 (SCOTUS)

October 2015 (SCOTUS)

November 2015 (SCOTUS)