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THE YEAR IN LAW

November 2015

November 2: The Obama Administration announces that the Office of Personnel Management will be taking action to “ban the box” in federal employment—that is, delay inquiries into criminal history until later in the hiring process, so that applicants with prior criminal histories have a better chance of competing for federal employment.

November 3: A report indicates that over \$15.8 million dollars have been spent on Pennsylvania’s seven-way Supreme Court election, making it the costliest state Supreme Court race in history.

November 6: The Supreme Court grants review in *Zubik v. Burwell*, a challenge to the accommodation for nonprofit religious groups that object to the Affordable Care Act’s contraceptive mandate.

November 9: By a 2-1 vote, the Fifth Circuit Court of Appeals upholds a district court’s injunction of President Obama’s executive actions on immigration. • The University of Virginia’s Phi Kappa Psi chapter files a defamation lawsuit against Rolling Stone magazine and its publisher over the magazine’s retracted story regarding an alleged gang rape at one of the fraternity’s parties.

November 10: New York State Attorney General Eric Schneiderman orders popular daily fantasy sports companies DraftKings and FanDuel to stop accepting bets from New York residents, claiming the games constitute illegal gambling.

November 13: The Supreme Court grants review in *Whole Woman’s Health v. Hellerstedt*, a challenge to two provisions of a Texas law requiring physicians who perform abortions to have admitting privileges at a nearby hospital and requiring abortion clinics to be equipped similarly to ambulatory surgical centers.

November 18: Judge Anne-Christine Massullo of San Francisco Superior Court rules that a divorced couple’s embryos must be destroyed, per an agreement they signed during their marriage. The former wife had argued that she should be allowed to use the embryos, because she would no longer have the chance to bear biological children.

November 20: The Obama Administration files its petition for certiorari in *United States v. Texas*, seeking review of a decision enjoining President Obama’s executive actions on immigration (see November 9, 2015 entry). • UnitedHealth Group announces that it is considering discontinuing its participation in the Affordable Care Act’s exchanges in 2017.

November 30: Joseph Anthony Caputo, who wrapped himself in an American flag and then jumped over the White House fence on Thanksgiving, pleads not guilty to criminal charges and is released pending further proceedings.

December 2015

December 3: Texas files suit against the Obama Administration, seeking to stop the resettlement of Syrian refugees in the state

December 4: Prosecutors in Manhattan declare that they are planning to re-prosecute several former leaders of Dewey and LeBoeuf LLP, a law firm that dissolved into bankruptcy proceedings. The trial of those leaders, for grand larceny, had ended in a mistrial. • The District of Columbia Circuit Court of Appeals hears oral argument on the legality of the FCC's most recent "net neutrality" order.

December 7: The Supreme Court denies review in *Friedman v. City of Highland Park*, a case challenging an Illinois town's ordinance that bans the possession of assault weapons or large-capacity magazines. The Seventh Circuit had upheld the ordinance. Justices Scalia and Thomas dissent from the denial of review.

December 9: The Supreme Court hears oral argument in *Fisher v. University of Texas*, a challenge to the University of Texas at Austin's use of race in college admissions. This argument is the second in the case's history—the case was at the Court two Terms earlier, and culminated in a decision remanding the case back to the Fifth Circuit for further proceedings.

December 14: The Army announces that it will try Sergeant Bowe Bergdahl on charges that he deserted his unit in Afghanistan and endangered the lives of soldiers who searched for him. Bergdahl was captured by the Taliban after he left his unit, and returned to the United States in a prisoner exchange in 2014. If convicted, Bergdahl could be subject to a sentence of life in prison.

December 15: The District of Columbia Circuit Court of Appeals overturns a decision striking down a revised District of Columbia gun ordinance, ruling that the judge lacked authority to issue the decision. U.S. District Judge Frederick Scullin, Jr., of Syracuse, New York, had been appointed to resolve a challenge to an earlier version of the law, and when the law was revised, the subsequent challenge was automatically assigned to him as well. The D.C. Circuit ruled that Scullin's assignment to decide a case outside his ordinary jurisdiction ended when the first case ended.

December 16: Baltimore Circuit Judge Barry Williams declares a mistrial in the prosecution of Baltimore Police Officer William G. Porter for his role in the death of Freddie Gray. Gray died after suffering serious injuries in the back of a police van, and Porter was the first of six officers to be tried in connection with Gray's death.

December 20: In an interview with CBS's "60 Minutes," Apple, Inc. CEO Tim Cook defends his company's policy of keeping some iPhone data encrypted, notwithstanding suggestions that such data could be used to combat terrorism.

December 21: The Pennsylvania Supreme Court upholds Governor Tom Wolf's decision to impose a moratorium on the death penalty while awaiting a report on the way the penalty is administered in the state.

December 29: A grand jury in Cleveland, Ohio decides not to indict the police officer who shot and killed Tamir Rice, a 12-year-old boy who was carrying a toy gun. The incident was one of several in 2015 that generated nationwide scrutiny of interactions between law enforcement and African-Americans.

December 31: Chief Justice John Roberts issues his year-end report on the federal judiciary, in which he discusses recent changes to the Federal Rules of Civil Procedure, and urging “a change in our legal culture that places a premium on the public’s interest in speedy, fair, and efficient justice.”

January 2016

January 4: President Obama announces a series of executive actions designed to expand background checks for the purchase of firearms, increase enforcement of federal gun laws, enhance mental health reporting to the background check system, and explore new gun safety technology.

January 6: Alabama Chief Justice Roy Moore issues an order requiring state probate judges to enforce the state’s same-sex marriage ban, citing “confusion” over the interaction between a March 2015 decision by his court upholding that ban, and a June 2015 decision by the Supreme Court holding that the U.S. Constitution guarantees marriage equality.

January 11: The Fourth Circuit issues its decision in *Bauer v. Lynch*, reversing a ruling invalidating the FBI’s gender-normed physical fitness standards. The lawsuit had been filed by a male applicant who completed 29 of the required 30 pushups for male trainees, and claimed it was unlawful for the FBI to require female trainees to complete only 14 pushups. The Fourth Circuit remands the lawsuit for further consideration by the district court. • The Supreme Court hears oral argument in *Friedrichs v. California Teachers Association*, a case seeking reversal of longstanding Supreme Court precedent allowing public sector unions to collect fees from all employees. Press coverage suggests that the Court is ready to overrule that precedent after repeatedly calling it into question in recent decisions.

January 14: Citizens United, the advocacy group involved in the Supreme Court’s landmark *Citizens United v. FEC* decision, files a lawsuit seeking Chelsea Clinton’s correspondence with State Department officials during her mother’s tenure as Secretary of State.

January 15: The Supreme Court grants certiorari in *McDonnell v. United States*, a challenge to former Virginia Governor Bob McDonnell’s public corruption convictions.

January 19: Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia rules that the Obama Administration must turn over to Congress documents about the “Fast and Furious” gun-tracking operation, despite the Administration’s claims of executive privilege. Jackson also leaves open the possibility that some of the documents may be withheld for other reasons. • The Supreme Court grants review in *United States v. Texas*, a challenge to President Obama’s executive actions on immigration. The Court also adds a question for the parties to address regarding whether the President’s actions violate the Constitution’s Take Care Clause (see November 20, 2015 entry).

January 20: The Detroit, Michigan school district files a lawsuit to try to stop a massive “sick-out” by teachers protesting conditions in the city’s public schools. The lawsuit is later dismissed.

January 25: The Supreme Court issues its decision in *Montgomery v. Louisiana*, holding that its 2012 decision in *Miller v. Alabama* is retroactive to cases on state collateral review. *Miller* held that juvenile homicide offenders cannot be sentenced to mandatory life without parole. • Trial begins in federal court in a challenge to North Carolina’s Voter ID law.

January 27: Ferguson, Missouri releases a proposed consent decree with the Justice Department that contains reforms to its police department and court systems, in the hopes of avoiding a federal lawsuit stemming from the Department’s investigation of the city following the 2014 death of Michael Brown.

January 28: Governor Doug Ducey (R-AZ) issues a statement to the *Arizona Republic* supporting his state’s removal from the Ninth Circuit Court of Appeals, on the ground that it is “by far the most overturned and overburdened court in the country.”

February 2016

February 3: Judge Steven O’Neill, a state-court judge in Pennsylvania, rules that a former district attorney’s promise not to prosecute Bill Cosby for sexual assault was not legally binding, thus allowing prosecutors to move forward with a case against him.

February 4: The Fourth Circuit Court of Appeals issues a decision in *Kolbe v. Hogan*, holding that the Second Amendment requires the application of strict scrutiny in a challenge to Maryland’s Firearm Safety Act. The court subsequently grants rehearing en banc.

February 9: The Supreme Court issues an order staying implementation of the Clean Power Plan—the EPA’s carbon rule for power plants—pending the resolution of a legal challenge to the rule in the District of Columbia Circuit Court of Appeals. The Court’s ruling is split 5-4, with Justices Ginsburg, Breyer, Sotomayor, and Kagan dissenting from the stay.

February 10: The Department of Justice announces that it has filed a civil rights lawsuit against the city of Ferguson, Missouri, claiming that local law enforcement officials’ conduct violates the First, Fourth, and Fourteenth Amendments as well as federal civil rights laws (see January 27, 2016 entry).

February 13: Associate Justice Antonin Scalia passes away at age 79 while on a vacation at Cibolo Creek Ranch in Texas. Scalia had served on the Court for three decades after being appointed by President Reagan.

February 14: All current and retired Justices issue statements regarding the death of Justice Scalia (see preceding entry), describing him as a brilliant jurist and close friend.

February 19: The Supreme Court hosts a memorial service for Justice Scalia, during which his former clerks stand vigil over the Justice’s casket. The casket is placed on the Lincoln Catafalque, the platform that held President Lincoln’s coffin after his assassination. Thousands of mourners attend, including President Obama.

February 22: Judge Ann Nevins, a bankruptcy judge presiding over the bankruptcy proceedings for popular rapper 50 Cent, orders him to explain pictures posted on his Instagram account of him playing with stacks of money. 50 Cent later explains that the money was fake.

February 23: Senator Mitch McConnell (R-KY) announces that Republicans will not hold confirmation hearings for any nominee selected by President Obama to fill the vacancy on the Supreme Court (see February 13, 2016 entry).

February 24: President Obama authors a post on the popular Supreme Court blog “SCOTUSBlog” regarding the approach he will take in selecting a nominee to replace Justice Antonin Scalia on the Supreme Court. • The Utah Senate approves a resolution calling on Congress to repeal the Seventeenth Amendment to the Constitution and allow state senators to select U.S. senators.

February 29: A group of professors release a law review article suggesting that judicial law clerks trend to be “disproportionately liberal,” particularly on lower courts. • Judge Tanya Walton Pratt of the U.S. District Court for the Southern District of Indiana issues a decision enjoining an order from then-Indiana Governor Mike Pence barring state agencies from helping Syrian refugees resettle in Indiana. The court’s opinion finds that the directive “clearly discriminates” against the refugees. • Justice Clarence Thomas asks a series of questions at oral argument in *Voisine v. United States*, breaking a decade-long silent streak at oral arguments.

March 2016

March 2: The Supreme Court hears oral argument in *Whole Woman’s Health v. Hellerstedt*, a challenge to two provisions of a Texas law requiring physicians who perform abortions to have admitting privileges at a nearby hospital and requiring abortion clinics to be equipped similarly to ambulatory surgical centers (see November 13, 2015 entry). Two days later, the Court stays enforcement of a similar Louisiana law pending its decision in the Texas case. • The Utah Senate narrowly votes to abolish the death penalty.

March 7: The Supreme Court denies a petition for certiorari filed by Apple Inc. seeking review of a decision holding that the company violated the antitrust laws in pricing e-books. • The Supreme Court issues a per curiam decision in *V.L. v. E.L.*, overturning an Alabama Supreme Court decision holding that the Constitution’s Full Faith and Credit Clause does not require the Alabama courts to respect a Georgia same-sex adoption decree.

March 10: Administrative proceedings begin in a dispute between the National Labor Relations Board and McDonald’s over whether McDonald’s is a “joint employer” with franchised restaurants and thus liable for labor law violations at the restaurants.

March 11: Judge Dan Pellegrini of the Pennsylvania Commonwealth Court dismisses a lawsuit claiming that Ted Cruz (R-TX), one of the Republican nominees for President, is ineligible for office because he was born outside the United States.

March 16: President Obama nominates Chief Judge Merrick Garland of the District of Columbia Circuit Court of Appeals to fill the Supreme Court vacancy created by the passing of

Justice Antonin Scalia. The nomination is met with opposition from Republicans, who had previously asserted that the vacancy should not be filled because it arose during an election year (see February 23, 2016 entry.)

March 17: Chief Judge Richard Roberts retires from the U.S. District Court for the District of Columbia amidst claims that he had an inappropriate relationship with a witness in his former career as a federal prosecutor.

March 21: The Supreme Court issues a per curiam opinion in *Caetano v. Massachusetts*, reversing an opinion by the Supreme Judicial Court of Massachusetts upholding a law prohibiting the possession of stun guns. The Court rules that the state court did not correctly apply the framework for analyzing Second Amendment questions set forth in the landmark *District of Columbia v. Heller* decision. • The Supreme Court grants review in *Samsung Electronics Co. v. Apple*, a dispute over how damages should be assessed in Apple's lawsuit against Samsung for infringing on design patents for the iPhone.

March 22: The Kansas State Senate passes a bill creating a list of impeachable offenses for Kansas justices and other elected individuals, which includes "attempting to usurp" legislative powers as a ground for impeachment.

March 23: The Supreme Court hears oral argument in *Zubik v. Burwell*, a challenge to the accommodation for nonprofit religious groups that object to the Affordable Care Act's contraceptive mandate. Press coverage suggests that the Justices are divided on how to resolve the case.

March 24: A survey of recent law school graduates published by Access Group and Gallup reveals that only 38 percent of graduates reported having a good job upon graduation, and that only one out of every five recent graduates agreed that law school was worth the cost.

March 28: The ACLU of North Carolina and Equality North Carolina file a lawsuit in federal court challenging North Carolina HB-2, a bill requiring transgender people to use the public bathroom corresponding to their sex assigned at birth.

March 29: Sheldon Silver, the former speaker of the New York State Assembly, is disbarred following his conviction for federal public corruption charges. • The Supreme Court issues a per curiam opinion in *Friedrichs v. California Teachers Association*, affirming the decision below by an equally-divided Court. The case had presented a major challenge to public sector union financing, and the 4-4 result leaves in place longstanding Supreme Court precedent allowing such unions to collect fees from all employees (see January 11, 2016 entry). • The Supreme Court asks the parties in *Zubik v. Burwell* to file supplemental briefs regarding potential alternatives to the Affordable Care Act's contraceptive accommodation process (see March 23, 2016 entry).

March 31: George Mason University announces that it will be renaming its law school the "Antonin Scalia School of Law," in honor of recently-deceased Justice Antonin Scalia. • Business groups file a lawsuit seeking to enjoin the Department of Labor's "Persuader Rule,"

which would require employers to file reports disclosing interactions with consultants who help the employer manage its message in response to union organizing campaigns.

April 2016

April 4: The Supreme Court issues its unanimous decision in *Evenwel v. Abbott*, holding that states can apportion legislative seats by equalizing the total population of voters in each district. The plaintiffs in the case had alleged that the “one person, one vote” doctrine precluded using that metric, because it counts individuals who cannot vote.

April 5: Republican Senator Susan Collins (R-ME) urges her colleagues to meet Merrick Garland, and the Senate Judiciary Committee to grant him a hearing, after he visits her office (see March 16, 2016 entry). • George Mason University announces that it will be renaming its law school the “Antonin Scalia Law School,” after posts on the internet suggest that the previously-proposed name (“the Antonin Scalia School of Law”) will create an unfortunate acronym (see March 31, 2016 entry).

April 12: Merrick Garland has breakfast with Senate Judiciary Committee Chairman Charles Grassley (R-IA) (see previous entry).

April 13: The Sixth Circuit Court of Appeals holds that the government does not need a warrant to access “cell-site location information,” or records of when cell phones check in with the nearest cell towers.

April 18: The Supreme Court hears oral argument in *United States v. Texas*, a challenge to President Obama’s executive actions on immigration. Most coverage of the argument suggests the Justices are evenly divided over how to resolve the case (see Jan. 19, 2016 entry).

April 19: Chief Justice John Roberts welcomes 12 deaf or hard-of-hearing lawyers to the Supreme Court bar by using American Sign Language from the bench, marking the first time he has used a language other than English in an admissions ceremony. Roberts reportedly learned to sign the phrase “Your motion is now granted” prior to the ceremony. • Judge Barbara Bellis of the Connecticut Superior Court sets an April 2018 trial date in a lawsuit filed by families of victims of the 2012 Newtown school massacre against the manufacturer of the gun used by the perpetrator.

April 22: A lawsuit filed by advocacy organizations alleges that fees on the “PACER” system are illegally high. The system allows the public to access federal court documents over the internet.

April 25: City of Cleveland officials agree to pay \$6 million to settle a civil rights and wrongful death lawsuit based on the 2014 death of Tamir Rice, a boy who was shot by police while carrying a toy gun. • The Second Circuit Court of Appeals reinstates New England Patriots quarterback Tom Brady’s four-game suspension based on the “Deflategate” controversy. NFL Commissioner Roger Goodell suspended Brady based on his alleged role in a scheme to deflate footballs before the 2015 AFC Championship Game against the Indianapolis Colts. A district judge had previously overturned Brady’s suspension.

April 27: The Supreme Court hears oral argument in *McDonnell v. United States*, a challenge to former Virginia Governor Bob McDonnell's public corruption convictions. Based on the questioning from the Justices, press coverage universally suggests that the government will lose and McDonnell's conviction will be overturned.

April 28: A blog post on "Empirical SCOTUS" deems the Harvard Law Review the most-cited law review in Supreme Court opinions issued since the April 2013 Term. Yale, Columbia, Chicago, and NYU round out the top five.

May 2016 (SCOTUS)

May 16: The Supreme Court issues a per curiam decision in *Zubik v. Burwell*, remanding the cases to the lower courts in light of the supplemental briefs filed by the parties regarding potential alternatives to the existing accommodation (see March 29, 2016 entry). The Court instructs the lower courts to give the parties "an opportunity to arrive at an approach going forward that accommodates petitioners' religious exercise while at the same time ensuring that women covered by petitioners' health plans receive full and equal health coverage, including contraceptive coverage" (quotations omitted).

June 2016 (SCOTUS)

June 20: The Supreme Court issues its decision in *Utah v. Streiff*, holding, by a 5-3 vote, that the Fourth Amendment's exclusionary rule does not require the suppression of evidence seized during an unconstitutional investigatory stop if the officer learns, during the stop, that the suspect is subject to a valid arrest warrant, and seizes the evidence during a search incident to that arrest. Justice Thomas issues the opinion for the Court, which is joined by the Chief Justice and Justices Kennedy, Breyer, and Alito. Justice Sotomayor issues an impassioned dissent, citing social science research and criticizing the police practices at issue in the suit.

June 23: The Supreme Court announces that it has divided 4-4 in *United States v. Texas*, leaving in place a district court injunction stopping implementation of President Obama's executive actions on immigration (see April 18, 2016 entry). • The Court issues its decision in *Fisher v. University of Texas at Austin*, upholding the University of Texas at Austin's limited use of race in college admissions. Justice Kennedy authors the majority opinion, which is joined by only three other Justices (Ginsburg, Breyer, and Sotomayor). The Chief Justice and Justices Thomas and Alito dissent. Justice Kagan is recused. (See December 9, 2015 entry).

June 27: The Supreme Court issues its decision in *Whole Woman's Health v. Hellerstedt*, a challenge to two provisions of a Texas law requiring physicians who perform abortions to have admitting privileges at a nearby hospital and requiring abortion clinics to be equipped similarly to ambulatory surgical centers. In a 5-3 opinion by Justice Breyer, the Court holds that both provisions place "a substantial obstacle in the path of women seeking a previability abortion, each constitutes an undue burden abortion access, . . . and each violates the Federal Constitution" (see March 2, 2016 entry). • The Court also issues a unanimous opinion, by Chief Justice Roberts, in *McDonnell v. United States*, invalidating McDonnell's public corruption convictions. The Court rules that the prosecution rested on an overly broad definition of "official act" in the

public corruption statutes, and remands for further proceedings (see April 27, 2016 entry). The government later announces that it will not seek reprosecution.

June 28: After holding the rehearing petition in *Friedrichs v. California Teachers Association* for several months, the Supreme Court denies it. The Court had divided 4-4 in the case about public sector unions in March (see March 29, 2016 entry).

October 2016 (SCOTUS)

October 3: After holding the rehearing petition in *United States v. Texas* over the summer, the Supreme Court denies it. The Court had divided 4-4 in the case challenging President Obama's executive actions on immigration in March (see June 23, 2016 entry).

October 4: The Supreme Court begins October Term 2016 by hearing oral argument in two cases: *Bravo-Fernandez v. United States*, regarding the Double Jeopardy Clause, and *Shaw v. United States*, regarding the scope of the federal bank fraud statute.

October 5: The Supreme Court hears oral argument in *Salman v. United States*, regarding the proof prosecutors must put forth to sustain an insider-trading prosecution.

October 11: The Supreme Court hears oral argument in *Samsung Electronics Co. v. Apple*, a dispute over how damages should be assessed in Apple's lawsuit against Samsung for infringing on design patents for the iPhone (see March 21, 2016 entry).

November 2015 (SCOTUS)

November 7: The Supreme Court hears oral argument in *National Labor Relations Board v. SW General*, a challenge to the President's ability to have certain government officials serve as nominees to offices requiring Presidential appointment and Senate confirmation while they are also serving in an acting capacity in those roles.