

# THE YEAR IN LAW 2013-2014

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*A review of some highlights of law in America (with a few overseas detours) during the past twelve months or so.*

## NOVEMBER 2013

**Nov. 1:** The Virginia Supreme Court overturns a jury verdict in a wrongful-death suit filed by the parents of two students killed in a 2007 massacre by a student-gunman, finding that the university had no duty to warn students about the potential for criminal acts by the gunman. • The U.S. Court of Appeals for the D.C. Circuit holds that the provision of the Affordable Care Act requiring employers to provide their employees health insurance that includes birth control violates the First Amendment.

**Nov. 4:** Attorney General Eric Holder states that Khalid Sheikh Mohammed and four alleged co-conspirators “would be on death row as we speak” if he had been allowed to try them in federal court, as he initially planned. Due to political opposition to Holder’s decision, the Justice Department instead tried the defendants in a military court, resulting in

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lengthy delays tied to the defendants' challenges to the legitimacy of that mode of adjudication. • The Justice Department announces a \$1.2 billion settlement of a criminal insider-trading indictment filed against SAC Capital Advisors LP. The company had already agreed to pay \$616 million to the SEC.

**Nov. 6:** At oral argument in the Supreme Court in *Bond v. U.S.*, the Justices pepper Solicitor General Don Verilli with hypotheticals about the proper use of a federal statute enforcing the Chemical Weapons Convention. Carol Bond had been convicted under the statute after she tried to poison her husband's paramour by spreading a toxic chemical on her doorknob handle. Bond challenged her conviction, contending that the statute exceeded Congress's power under the Treaty Clause. Justice Samuel Alito asks if he and his wife could be prosecuted for distributing chocolate to children on Halloween, because chocolate is poisonous to dogs, making it a toxic chemical under the Convention.

**Nov. 7:** The Supreme Court hears oral argument in *Town of Greece v. Galloway*, a case addressing the constitutionality of prayers at town hall meetings. Justice Antonin Scalia asks if nonsectarian prayers proposed by the counsel for the plaintiffs would be acceptable to "devil worshippers" and "atheists." • The Senate passes legislation banning workplace discrimination against gay, lesbian, bisexual, and trans-gender workers. The vote on the legislation is 64-32. • President Barack Obama gives an interview apologizing for the fact that thousands of Americans were losing their health insurance as part of the rollout of the Affordable Care Act. The President had previously indicated that people who liked their insurance plans could keep them.

**Nov. 8:** The U.S. Court of Appeals for the D.C. Circuit issues a decision in *U.S. v. Glover*, holding that a federal judge in the District of Columbia lacked jurisdiction to authorize the FBI to place an electronic bug on the defendant's truck in Maryland.

**Nov. 12:** The Louisiana Supreme Court declines to grant review of an intermediate court opinion holding that an amended version of New Orleans's "anti-begging" statute is unconstitutional. A federal judge had previously invalidated a prior iteration of the ordinance as overbroad. • Senate Republicans block the President's nomination of Cornelia Pillard to the U.S. Court of Appeals for the D.C. Circuit. Pillard is the second judicial candidate blocked in the past month. • The Justice Department

reaches a settlement with American Airlines and U.S. Airways that allows the two companies to merge, dropping its claims that the merger would result in higher airfares, higher fees, and fewer choices for consumers.

**Nov. 13:** The U.S. Court of Appeals for the Second Circuit issues an opinion clarifying that it had not meant to suggest that U.S. District Judge Shira Scheindlin had misbehaved when it removed her from a case involving New York City's stop-and-frisk policies based on alleged violations of the judicial code of conduct. The Court instead holds that disqualification was required because Scheindlin's conduct on the bench, and her conduct in the media, would cause a reasonable observer to question her impartiality.

**Nov. 14:** Judge Denny Chin, of the U.S. Court of Appeals for the Second Circuit, dismisses a lawsuit against Google brought by authors claiming that Google did not obtain their permission before scanning their works. Chin concludes that Google's efforts represent "fair use" of the authors' material.

**Nov. 15:** The South Carolina Advisory Committee on Standards of Judicial Conduct issues an opinion stating that a full-time magistrate judge may participate as a dancer in a fund-raiser at his church styled after the TV show "Dancing with the Stars." The Committee relies on the fact that the judge is not "personally solicit[ing] donations or allow[ing] the organization to use the prestige of the judge's office in fund-raising efforts."

**Nov. 18:** The U.S. Court of Appeals for the Federal Circuit allows Apple a second chance to raise claims that Samsung infringed on its patents in creating phones and tablets, and should be enjoined from selling those devices. A district court judge had previously denied Apple's request for an injunction. • In a speech to bank compliance officers, lawyers, and investigators, Deputy Attorney General James Cole suggests that banks are not doing enough to ensure compliance with applicable laws and regulations, citing ongoing and persistent government investigations into bank fraud. • Senate Republicans block the President's nomination of Robert Wilkins, a district judge on the U.S. District Court for the District of Columbia, to the U.S. Court of Appeals for the D.C. Circuit. Wilkins is the third nominee to be blocked in the last month.

**Nov. 21:** The U.S. Senate votes to exercise the "nuclear option" and allow filibusters to be broken by majority vote (rather than the usual 60 votes

required to invoke cloture) for most executive branch and judicial nominations. The vote, spearheaded by Majority Leader Harry Reid, is viewed as a response to Senate Republicans' blocking of three of the President's nominees to the U.S. Court of Appeals for the D.C. Circuit (see Nov. 12 and 18 entries). • A jury awards Apple \$290 million in the retrial of the damages award in its patent infringement suit against Samsung. Combined with \$600 million previously awarded, Apple's total is approximately \$903 million — less than the \$1.05 billion initially awarded (see Nov. 8 entry).

**Nov. 24:** Judge J. Harvie Wilkinson III, of the U.S. Court of Appeals for the Fourth Circuit, pens an editorial in the *Washington Post* decrying the end of the filibuster, contending that it may result in more judges being appointed to the federal bench “without a scintilla of bipartisan support” (see Nov. 21 entry).

**Nov. 25:** An Ohio grand jury indicts several school officials, including the superintendent of schools, in Steubenville, Ohio, for their possible role in covering up a rape committed by several football players.

**Nov. 26:** The Supreme Court grants review in two cases presenting the question whether the provision of the Affordable Care Act requiring employers to provide birth control coverage in employee insurance violates the Constitution or the Religious Freedom Restoration Act (see Nov. 1 entry). • A group of large creditors in the Detroit municipal bankruptcy files a motion asking for an independent valuation of the city's art collection — the first step in an effort to force the city to sell its art as part of the bankruptcy.

## DECEMBER 2013

**Dec. 3:** The U.S. Court of Appeals for the Ninth Circuit announces that it will begin providing live video streaming of en banc oral arguments, making it the first federal appellate court to offer such a service. • U.S. Bankruptcy Judge Steven Rhodes rules that Detroit is eligible for municipal bankruptcy. Detroit is the largest city ever to seek reorganization under the bankruptcy laws.

**Dec. 4:** Auction house Christie's values Detroit's art collection, housed at the Detroit Institute of Arts, at up to \$866 million. The collection includes paintings from Vincent Van Gogh and Pieter Breugel (see Nov. 26 entry). • The ABA's accreditation committee censures Rutgers University at

Camden's law school for allowing applicants to take a standardized graduate-admissions test, rather than the LSAT, to obtain admission to the school.

**Dec. 6:** At a congressional policy briefing at George Mason University's law school, former Deputy Attorney General David Ogden states that the government is paying too much under whistleblower laws and is failing to give companies adequate incentives to self-police for legal compliance. The government's own reports indicate that it recovered more than \$16.7 billion through False Claims Act cases, but incurred more than \$72 billion in losses due to fraud and improper payments. • A federal judge halts customers' last-ditch attempt to halt the merger of U.S. Airways and American Airlines, finding there is no evidence supporting a finding of irreparable harm (see Nov. 12 entry).

**Dec. 9:** A French court rules that tobacconists have the exclusive right to sell electronic cigarettes, which should be subject to advertising bans like those on tobacco-based products. • The Senate votes to extend a ban on the manufacture of plastic firearms designed to evade metal detection, but declines to extend the law to cover plastic guns made with 3-D printers.

**Dec. 10:** The Senate confirms Patricia Millett to the U.S. Court of Appeals for the D.C. Circuit by a 56-38 vote. She had been filibustered by Senate Republicans prior to Senate Democrats' decision to exercise the nuclear option. • The SEC, CFTC, Office of the Comptroller of the Currency, FDIC, and Federal Reserve approve the so-called "Volcker Rule," which restricts banks from making risky investments with their own money. The controversial rule was part of the 2010 Dodd-Frank law.

**Dec. 12:** The Senate confirms Cornelia Pillard to the U.S. Court of Appeals for the D.C. Circuit by a straight party-line vote. Pillard is the second judge confirmed to the D.C. Circuit in the aftermath of Democrats' decision to eliminate the filibuster for judicial nominees (see Nov. 21 entry). • U.S. District Judge Lewis A. Kaplan orders a joint trial for three alleged Al-Qaeda operatives accused of planning two U.S. Embassy bombings in Kenya and Tanzania in 1998. He also announces that he may empanel two juries to avoid prejudicing a single jury with evidence pertaining to only one of the defendants.

**Dec. 13:** U.S. District Judge Larry Burns orders removal of the 29-foot cross at the Mt. Soledad Veteran's Memorial in San Diego, because a series

of changes designed to secularize the memorial could not overcome its long sectarian history. He had previously held that the cross could remain in place, but the Ninth Circuit reversed, finding that the cross violated the First Amendment but permitting supporters of the cross an opportunity to alter the monument to minimize Establishment Clause problems.

**Dec. 16:** The Boston Police Department indefinitely suspends its use of automatic license plate readers in the wake of a *Boston Globe* report indicating that the Department had inadvertently released the license plate numbers of 68,000 vehicles scanned by the readers over a six-month period.

- U.S. District Judge Richard J. Leon rules that the NSA's phone surveillance program likely violates the Fourth Amendment, concluding that access to records of who a person calls and where they are calling from gives the government "a vibrant and constantly updating picture of the person's life," and calling the program "almost Orwellian."

**Dec. 17:** At a breakfast gathering in Virginia hosted by the Northern Virginia Technology Council, Justice Ruth Bader Ginsburg calls it an "exhilarating change" that the three female Justices on the Court are no longer confused for each other at oral argument. • Preet Bharara, U.S. Attorney for the Southern District of New York, directs prosecutors to seek forfeiture judgments that would encompass retirement payments in cases involving politicians convicted of corruption.

**Dec. 18:** U.S. District Judge Richard Story grants a temporary injunction against Georgia's decision to charge \$5/month to individuals who receive subsidized cell phone service as part of a plan designed to ensure that low-income households have access to basic communications services. • Wisconsin Governor Scott Walker signs a bill making it more difficult for the state to force schools to drop Native American theme names and voiding state directives that two schools change their names. The bill amends a 2010 law that made it harder for teams to keep such names. • The New Mexico Supreme Court issues an opinion declaring the state's opposite-sex-only marriage laws unconstitutional. New Mexico is the 16th state to allow same-sex marriage.

**Dec. 23:** Queen Elizabeth II grants a royal pardon to Alan Turing, a famous code-breaker, for a 1952 conviction for homosexual activity. Turing died 59 years earlier. • The American Bankers Association files a lawsuit seeking to suspend one part of the Volcker Rule, claiming that small banks will incur hundreds of millions of dollars in capital losses and curtail

lending activities (see Dec. 10 entry). • The en banc U.S. Court of Appeals for the Ninth Circuit strikes down a Los Angeles ordinance requiring hotel operators to produce information about hotel guests to police officers, upon request, without a warrant. The court rules that guests lack a privacy interest in the hotel's records, but that the hotel has the right to exclude others from prying into its records.

**Dec. 27:** U.S. District Judge Ruben Castillo rules that four novels and 46 short stories about Sherlock Holmes are in the public domain and can be freely reinterpreted by new authors, although 10 later short stories written by Sir Arthur Conan Doyle are not yet part of the public domain. • U.S. District Judge William H. Pauley III upholds the NSA's collection of U.S. phone consumer data, creating a division of authority over the program. He notes that there is no evidence that NSA used the data collected for any purpose other than attempting to stop terrorist attacks (see Dec. 16 entry).

**Dec. 31:** Chief Justice John G. Roberts issues his 2013 Year-End Report on the Federal Judiciary, lauding the judiciary's fiscal restraint, and noting that it consumes "just two-tenths of one percent of the federal government's total outlays." • U.S. District Judge William M. Skretny upholds most of New York's 2013 gun-control law, known as the SAFE Act, against a Second Amendment challenge. Among other things, the court upholds an expanded ban on semi-automatic weapons and ammunition magazines holding more than 10 rounds.

## JANUARY 2014

**Jan. 1:** Justice Sonia Sotomayor issues a temporary injunction barring the U.S. Government from enforcing the ACA's birth-control mandate against the Little Sisters of the Poor (an order of nuns in Colorado). A case assessing the propriety of the mandate as applied to non-religious for-profit corporations is already on the Court's docket (see Nov. 26 entry).

**Jan. 2:** The California Supreme Court grants a motion for admission to the state bar filed by a Mexican immigrant who graduated from law school and passed the California bar, but who is living in the United States illegally.

**Jan. 6:** The Supreme Court issues an order halting same-sex marriages in Utah pending the state's appeal of a district court ruling invalidating Utah's opposite-sex-only marriage laws. The Tenth Circuit had declined to

issue a similar order, and hundreds of same-sex couples married between the time of the district court's ruling and the Supreme Court's stay order.

**Jan. 7:** J.P. Morgan Chase agrees to pay \$1.7 billion to victims of the massive fraud scheme perpetrated by Bernard Madoff, as part of a deferred prosecution agreement signed by U.S. Attorney Preet Bharara. • Los Angeles County sheriff Leroy D. Baca retires in response to a three-year investigation into civil rights abuses in L.A. jails.

**Jan. 9:** A federal grand jury indicts Devyani Khobragade, an Indian consular worker, for visa fraud and making false statements in an effort to obtain a work visa for a babysitter and housekeeper. Khobragade was strip-searched after being arrested earlier in the month, prompting demonstrations in India and protests by the Indian government. • The federal government opens an investigation into whether New Jersey Governor Chris Christie orchestrated a traffic jam in retaliation against a political opponent.

**Jan. 13:** The Supreme Court hears oral argument in *Noel Canning v. NLRB*, a case involving the scope of the President's power to make "recess appointments." Press coverage almost overwhelmingly suggests the Court will limit — perhaps drastically — Presidential power in this area. • The Court denies review of a case from Arizona striking down a state law banning most abortions after a woman reaches the 20th week of pregnancy.

**Jan. 14:** The U.S. Court of Appeals for the D.C. Circuit strikes down FCC regulations requiring "net neutrality" — *viz.*, regulations mandating that internet service providers treat similar content equally over broadband internet. The court finds that the FCC lacked the authority to issue anti-discrimination rules because broadband internet is not a common carrier service. • U.S. District Judge Anita B. Brody denies preliminary approval to a \$760 million settlement between the National Football League and players suffering from complications due to concussions. Brody expresses concern "that not all Retired NFL Football Players who ultimately receive a Qualifying Diagnosis or their related claimants will be paid."

**Jan. 15:** The Justice Department announces that it will expand its restrictions on racial profiling to cover profiling based on religion, national origin, gender, and sexual orientation discrimination. • U.S. District Judge Paul Friedman rejects a challenge to Obama administration regulations



providing subsidized insurance coverage to individuals living in states that have not set up their own health insurance exchanges. Challengers to the law asserted that the relevant statutory text precludes subsidies for individuals who do not purchase insurance on an exchange established by a state.

**Jan. 16:** A group of snowboarders sue the Alta Ski Lifts Company, claiming that the ban on snowboards at its ski facility in Alta violates the equal protection clause of the U.S. Constitution by discriminating against snowboarders without any rational basis. The lawsuit is dismissed in September 2014.

**Jan. 21:** Harvard Law professor Lawrence Lessig posts a rap song to the website Rap Genius that he has been singing throughout his 185-mile long trek across New Hampshire. • The U.S. Court of Appeals for the Ninth Circuit holds that the Constitution prohibits excluding an individual from a jury based on her sexual orientation. The panel's opinion is authored by Judge Stephen Reinhardt, who previously authored an opinion invalidating California's gay-marriage ban.

**Jan. 23:** Virginia Attorney General Mark Herring announces that he will not defend the state's gay marriage ban in upcoming litigation. The state's constitutional amendment banning same-sex marriage was passed in 2006. • Federal prosecutors charge Vincent Asaro, a 78-year-old man, for his role in the 1978 "Lufthansa heist," in which masked gunmen seized \$6 million in cash and jewels from a cargo bay at John F. Kennedy International Airport. The heist was featured in Martin Scorsese's 1990 hit movie "Goodfellas." • A new study on independent political spending, to be published in the *Indiana Law Journal*, shows that the Supreme Court's ruling in *Citizens United* has not been attended by a spike in large expenditures (i.e., over \$55,000), but by a spike in expenditures ranging between \$1,000 and \$40,000.

**Jan. 27:** Stephen Glass, a former *New Republic* writer who fabricated dozens of stories, is deemed unfit to practice law by the California Supreme Court. • An appellate court in Florida removes a trial judge from presiding over a divorce proceeding because the judge had sent a Facebook "friend" request to the wife. The request was not accepted, and the judge subsequently issued several rulings favoring the husband.

**Jan. 28:** President Obama announces that he will raise the minimum

wage for employees of federal contractors to \$10.10 per hour — almost \$3 greater than the existing federal minimum wage of \$7.25. • The Obama administration allows reporters and human-rights advocates to view part of a hearing on whether certain detainees at Guantanamo should be released from the detention facility. • The family of late NFL player Junior Seau files an objection to the NFL's proposed concussion settlement, asserting that he suffered from degenerative brain disease caused by multiple concussions and blows to the head during his playing career (see Jan. 14 entry).

**Jan. 30:** Attorney General Eric Holder announces that the federal government will seek the death penalty against Dzhokhar Tsarnaev, the man accused of the Boston Marathon bombings. Holder asserts that the “nature of the conduct at issue and the resultant harm compel this decision.” • Attorneys for New York City file paperwork indicating that they will abandon their appeal of Judge Shira Scheindlin's ruling that the city's stop-and-frisk policies violate the Constitution. Soon after, attorneys for unions representing NYPD officers file papers seeking to appeal or oppose the dismissal of the suit (see Nov. 13 entry). • Deputy Attorney General James Cole announces that the government will be commuting more sentences for nonviolent drug offenders in the coming years. President Obama had granted clemency to eight such individuals in December.

**Jan. 31:** U.S. Magistrate Judge Paul Grewal imposes relatively moderate sanctions on Quinn Emanuel Urquhart & Sullivan LLP for allowing its client, Samsung Electronics Co., to obtain a copy of a confidential license agreement between Apple and Nokia. Judge Grewal criticizes Quinn Emmanuel's handling of the matter and orders the firm to reimburse Apple and Nokia for legal costs created by the leak. The error apparently occurred when a junior associate working late at night forgot to redact the agreement in a document production to Samsung.

## FEBRUARY 2014

**Feb. 2:** Jamie Casino, a personal-injury lawyer from Savannah, Georgia, produces, stars in, and airs a two-minute Super Bowl ad that becomes an internet sensation. The ad depicts the story of a lawyer who seeks to avenge his brother's death, and features a scene where Casino smashes a flaming sledgehammer into a tombstone. Casino claims the ad is based on the true story of his brother's 2012 shooting death.

**Feb. 4:** Missouri files a lawsuit against California, seeking to enjoin a California law requiring all producers who sell eggs in the state to avoid tethering or confining animals in a way that would prevent them from lying down, standing up, extending their limbs, or turning around freely. • A study by University of Michigan law professor Samuel Gross reveals that the number of falsely convicted individuals exonerated in 2013 (87) was the highest in decades, though there were fewer cases in which DNA evidence played a role. • Former Attorney General Alberto Gonzales publishes an article in the *George Washington Law Review* urging the Obama administration to limit drone strikes against U.S. citizens overseas by requiring prior approval by a military panel or a federal judge.

**Feb. 5:** Google reaches a settlement with the European Commission in a case involving antitrust scrutiny into Google's search results. The search engine company agrees to ensure that its search results give prominence to the same results offered by three major rivals.

**Feb. 6:** Twitter states that it is pressing the Justice Department for more information about government data requests pertaining to its customers. The company threatens to sue if the Department does not accede to the request. • Statistics from the Transactional Records Access Clearinghouse reveal that the number of criminal tax prosecutions has spiked during the Obama administration — to the tune of a 38.4% increase over the George W. Bush administration. • Preet Bharara, U.S. Attorney for the Southern District of New York, oversees the conviction of a former portfolio manager at SAC Capital Advisors LP — his 79th consecutive conviction or settlement in an insider trading case.

**Feb. 10:** The *Wall Street Journal Law Blog* publishes a story about a unique lawsuit filed by a woman seeking to establish that she is not, in fact, dead. The case involves a woman who filled out a credit application at a local branch bank, which then reported her as “deceased” on her credit report, prohibiting the woman from refinancing her mortgage. Her suit asserts that the bank and the credit reporting agency failed to adequately investigate her complaints. • Attorney General Eric Holder announces that same-sex spouses will now receive the same legal rights in federal matters as other married couples regarding issues of bankruptcy, prison visits, and testimonial privilege. • The Justice Department announces the end of a three-year hiring freeze.

**Feb. 11:** The corruption trial of former New Orleans Mayor Ray Nagin is delayed for a day after one of the jurors fails to show up for the second day of deliberations on the evidence. • Speaking at Georgetown's law school, Attorney General Eric Holder criticizes laws denying felons the right to vote as outdated, racially unfair, and counterproductive. Senators Mike Lee and Rand Paul, also in attendance, voice agreement with Holder's remarks. • Nevada's Attorney General announces that she will no longer defend the state's same-sex marriage law in an appeal to the U.S. Court of Appeals for the Ninth Circuit. The announcement is the third in the past six months in which a state law enforcement official has publicly disavowed laws restricting same-sex marriage. • The U.S. Attorney's Office for the Southern District of New York announces that it obtained \$4 billion in forfeitures over the past year, including the skeleton of a Tyrannosaurus dinosaur illegally smuggled into the United States.

**Feb. 12:** The Obama administration releases voluntary cybersecurity guidelines for utilities, banks, and other critical industries. • Former New Orleans Mayor Ray Nagin is convicted of bribery and other corruption charges based on conduct occurring in the aftermath of Hurricane Katrina (see Feb. 11 entry).

**Feb. 13:** The U.S. Court of Appeals for the Ninth Circuit issues a 2-1 ruling recognizing a right to carry a gun in public. The court declines to rule on whether the Second Amendment requires states to permit carrying concealed firearms. • U.S. District Judge Arenda L. Wright rules that Virginia's same-sex marriage ban is unconstitutional.

**Feb. 14:** The Treasury Department announces that it will allow banks to provide financial services to marijuana businesses, so long as the businesses are legal under state law and the institutions regularly report to the Department and keep an eye out for any suspicious activity. • The Indiana Court of Appeals invalidates the portion of its public intoxication law banning "annoy[ing]" conduct, finding that the term is too vague. The court notes that the term "annoy" "may encompass a vast array of human behavior, and the statute provides no guidance for distinguishing between acceptable and annoying conduct."

**Feb. 18:** As part of a settlement, the National Security Agency and Department of Homeland Security acknowledge that they erred in threatening legal action against retailer Zazzle.com for using their official logos in merchandise mocking the agencies.

**Feb. 20:** Emmett Burke, owner of a Chicago-style pizza restaurant in downtown Manhattan, challenges Justice Scalia to bring his favorite New York pizza to the restaurant for a taste test conducted by *Daily Show* host Jon Stewart. The challenge is in response to Scalia's comment that deep-dish pizza is "very tasty, but i[s] not pizza."

**Feb. 21:** The city of Detroit submits its financial restructuring plan, which covers an estimated \$18 billion in long-term obligations. The plan involves full payment to secured creditors, a discounted amount to pensioners, and 20 cents on the dollar to unsecured creditors (see Dec. 3 entry). • The U.S. Court of Appeals for the Seventh Circuit concludes that a grocery store ad featuring Michael Jordan's jersey number is commercial speech, buttressing Jordan's \$5 million dollar suit for misappropriating his identity.

**Feb. 26:** Apple files its opening brief in the U.S. Court of Appeals for the Second Circuit in a case challenging a ruling that it violated federal anti-trust law by participating in a conspiracy with publishers to increase e-book prices.

**Feb. 27:** A spectator sneaks a video camera into the U.S. Supreme Court, and captures video of a protestor who disturbs oral argument by urging the Court to overturn its *Citizens United* decision. • The U.S. Court of Appeals for the Seventh Circuit rules that an Indiana school board discriminated against a male teenager who was kicked off the basketball team for refusing to cut his hair. The teenager's attorney had asserted that the case is "about a kid who was forced to choose between the game he loves and not feeling like himself if he cut his hair."

**Feb. 28:** The U.S. Court of Appeals for the Ninth Circuit rules that a California high school did not violate its students' First Amendment rights when it told them they could not wear American flag t-shirts. The court accepts the school's argument that it was engaged in a good-faith effort to prevent a fight between the putative t-shirt wearing students and Mexican students.

## MARCH 2014

**Mar. 3:** An appeals court in Florida invalidates an \$80,000 settlement between a Miami high school and a former headmaster after the headmaster's daughter posted about it on Facebook. The settlement contained confidentiality terms that the daughter breached with her post. • The

Justice Department sues Sprint, claiming the company overcharged law enforcement agencies by more than \$21 million to facilitate eavesdropping on phone calls.

**Mar. 4:** U.S. District Judge Lewis A. Kaplan issues an opinion holding that a \$9.5 billion Ecuadorian verdict against Chevron was obtained by fraud. Kaplan concludes that the environmental litigation, instituted by lawyer Steven Donziger, involved widespread corruption, including a ghostwritten final judgment written by a bribed judge.

**Mar. 5:** The Obama Administration announces that it will allow individuals with health insurance plans that do not conform to the ACA's requirements to keep those plans through October 2017. • The Supreme Court hears oral argument in *Erica P. John Fund v. Halliburton*, a case addressing the ongoing validity of the "fraud on the market" presumption that permits many securities fraud class actions to go forward. • Florida's Senate judiciary committee votes out of committee a bill that would legalize firing a warning shot at a would-be attacker.

**Mar. 6:** The U.S. Attorney's Office for the Southern District of New York indict three former executives from Dewey & LeBoeuf LLP, claiming that they engaged in a years-long fraud to hide the now-defunct firm's financial problems from banks and other creditors.

**Mar. 7:** The Kansas Supreme Court rules that the state violated its constitution by underfunding poor school districts, in violation of the constitutionally protected educational rights of the students.

**Mar. 11:** General Keith Alexander, outgoing head of the NSA, sends a letter to the American Bar Association stating that the United States has policies and safeguards in place to prevent the mishandling of attorney-client privileged information collected during routine surveillance missions. • The Senate Banking Committee reaches agreement on a bill to overhaul Fannie Mae and Freddie Mac.

**Mar. 12:** A former CreditSuisse Group banker pleads guilty to helping Americans hide money in Switzerland. The indictment alleged the banker set up offshore accounts totaling \$3 billion. • Attorney General Eric Holder announces his support for a proposal to reduce the average recommended sentence for drug-trafficking offenses from 62 months to 51. • President Obama issues an executive order directing the Labor Department to increase the number of workers eligible for overtime pay by in-

creasing the salary ceiling for receiving overtime benefits. • U.S. District Judge Shira Scheindlin dismisses the indictment against Devyani Khobragade, an Indian consular official accused of committing fraud in connection with visa paperwork for her housekeeper. The dismissal is based on the fact that Khobragade was protected by diplomatic immunity when the indictment was filed (see Jan. 9 entry).

**Mar. 13:** The Florida Supreme Court declares unconstitutional limitations imposed on the amounts recoverable in medical malpractice lawsuits. The caps had limited the amount of pain and suffering damages to \$500,000 for injuries and \$1 million in cases where an individual died or was left in a permanent vegetative state.

**Mar. 14:** Homeowner assistance groups sue California Governor Jerry Brown, claiming he diverted to the State's general fund money that was earmarked for borrower assistance as part of national mortgage settlement with five major banks. • Manhattan prosecutors issue a second indictment against Devyani Khobragade, relying on her decision to leave the U.S., which eliminated her diplomatic immunity (see Jan. 9 and Mar. 12 entries). • Indiana legislators approve a bill that would allow gun owners to store firearms in cars parked in front of schools. A previous law made such conduct a felony.

**Mar. 16:** Brigadier General Jeffrey Sinclair agrees to plead guilty to some sexual assault charges in exchange for dismissal of more serious charges that could have required him to register as a sex offender. Army prosecutors had accused Sinclair of forcing a female captain under his command to perform certain sex acts, but their case had become plagued with credibility problems. Sinclair had previously pleaded guilty to having improper relationships with several subordinate officers.

**Mar. 17:** Jurors begin deliberating in the criminal prosecution of five former employees of Bernard L. Madoff. The jurors were initially called six months earlier and heard testimony from more than 40 witnesses. • The Law School Admissions Council issues new figures showing that the number of LSAT takers is up 1.1% from the previous year — the first time since June 2010 that there was an increase in the number of people taking the exam.

**Mar. 19:** Sulaiman Abu Ghaith (Al-Qaeda spokesman and Osama bin Laden's son-in-law) takes the stand in his own defense in his criminal

trial for providing material support to the terrorist organization and conspiring to kill Americans. • Federal prosecutors enter a deferred prosecution agreement with Toyota in which the company admits to misleading consumers about safety issues with its vehicles and agrees to pay \$1.2 billion to the United States. • Chevron requests an award of \$32.3 million in attorney fees from Steven Donziger — allegedly a fraction of the costs the company incurred in establishing that an environmental judgment obtained against Chevron was procured through fraud (see Mar. 4 entry).

**Mar. 20:** Toothpaste company Hello Product LLC announces that it will dispense 100,000 bottles of its toothpaste on the streets of Manhattan, in order to comply with an injunction against the sale of the toothpaste obtained by Procter & Gamble on the ground that the toothpaste's label is false and misleading. • U.S. District Judge William H. Pauley approves Toyota's deferred prosecution agreement (see previous entry) and urges prosecutors to continue their probe to find the individuals responsible for Toyota's misconduct. • A group of consumers sues Fitbit, makers of a fitness-tracking bracelet, claiming that the device causes blisters and rashes.

**Mar. 21:** The Illinois Supreme Court strikes down the state's 50-year-old eavesdropping law, which prohibits citizens from making audio recordings without first obtaining permission from all parties and imposes enhanced penalties for recording a conversation with a police officer. • Credit Suisse Group AG agrees to pay \$885 million to settle a lawsuit brought by the U.S. Federal Housing Finance Agency. The agency claimed that the bank mischaracterized mortgage-backed securities sold between 2005 and 2007.

**Mar. 24:** Jurors convict five of Bernard Madoff's former employees, concluding they helped him perpetrate the biggest financial fraud in history (see Mar. 17 entry). • Jurors also convict Sulaiman Abu Ghaith of providing material support to terrorists, after deliberating for just six hours (see Mar. 19 entry).

**Mar. 25:** The U.S. Court of Appeals for the Second Circuit affirms the insider trading conviction of Rajat Gupta, a former Goldman Sachs Group Inc. director. Gupta had challenged prosecutors' use of certain wiretap recordings at trial; the court approved not only the use of wiretaps on Gupta's phone, but also recordings of two conversations in which Gupta did not participate. • The Supreme Court hears oral argument in two cas-



es involving challenges to the contraception mandate in the Affordable Care Act (see Nov. 1 and 26 entries). • At almost the same time, the U.S. Court of Appeals for the D.C. Circuit hears oral argument in a case featuring a challenge to the IRS regulation providing insurance subsidies to low-income individuals purchasing exchange insurance plans in states that do not have their own health insurance exchanges (see Jan. 15 entry). • Smokers sue the city of New York, challenging a law banning individuals from “vaping,” or smoking e-cigarettes, in public places. • The U.S. Court of Appeals for the Ninth Circuit upholds a San Francisco ordinance requiring handgun owners to keep their firearms locked up or on their person when at home, and prohibiting the sale of hollow-point bullets.

**Mar. 26:** NLRB regional director Peter Sung Ohr issues a decision declaring that Northwestern University football players receiving athletic scholarships can unionize because they are employees of the university.

**Mar. 27:** U.S. District Judge Nelva Gonzales Ramos agrees to hear argument on a motion that would force General Motors to inform customers that they cannot drive their cars until their ignition switches are fixed.

**Mar. 28:** Maryland lawmakers include in an amended budget bill a threat to use the power of eminent domain to seize the property of the production company that creates the Netflix series “House of Cards” in an effort to force the continued recording of the show in the state. The show’s producers had previously sent a letter to the governor threatening to move production of the show to another state unless they received more tax credits.

## APRIL 2014

**Apr. 1:** A trial begins in Colorado federal district court over the validity of gun restrictions passed by the state legislature. The restrictions require background checks for all gun purchasers and ban the sale of ammunition magazines containing more than 15 rounds. • The Supreme Court holds, in *Burwell v. Hobby Lobby Stores*, that the ACA’s contraceptive mandate violates the First Amendment’s Petition Clause, and also finds that the mandate cannot be severed from the remainder of the Act, requiring its outright invalidation.<sup>1</sup>

**Apr. 2:** The Supreme Court issues its 5-4 opinion in *McCutchen v. FEC*,

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<sup>1</sup> April Fools!

invalidating federal election law imposing aggregate limits on political contributions. Justice Stephen Breyer dissents, joined by Justices Ginsburg, Sotomayor, and Elena Kagan, arguing that the majority's decision, combined with the Court's earlier decision in *Citizens United*, "eviscerates our Nation's campaign finance laws." • The U.S. Court of Appeals for the Fifth Circuit overturns a district court decision requiring Texas to disclose information about the source of its lethal injection drugs. The district court had stayed two executions, holding that the state had improperly withheld information about the source of drugs it planned to use.

**Apr. 3:** Federal prosecutors notify Reaz Qadir Khan, who is suspected of aiding a terror group in Syria, that some of the evidence against him was collected through the NSA's bulk surveillance program (see Dec. 16 and 27 entries). • The U.S. Court of Appeals for the Fourth Circuit overturns a \$920 million dollar verdict for DuPont and against Kolon Industries, holding that the trial judge had improperly excluded some of the defendant's evidence. The verdict was one of the largest-ever intellectual property damage awards. • Former U.S. Attorney General Alberto Gonzales is hired to be dean of Belmont University's law school.

**Apr. 4:** Dallas Mavericks owner Mark Cuban co-authors an op-ed in the *Wall Street Journal* arguing that the SEC would not have indicted him for insider trading if it had been forced to comply with the *Brady* rule during the litigation. • *Politico* reports that President Obama has had more judicial nominees confirmed than George W. Bush at the same point in their respective presidencies — 237 to Bush's 234.

**Apr. 7:** U.S. District Judge Esther Salas permits the FTC to move forward with a suit claiming that Wyndham Worldwide Corp. failed to make reasonable efforts to protect its customers' information. The suit is widely viewed as a major test of the FTC's authority to regulate corporate data security practices.

**Apr. 9:** The ABA releases its latest set of law school graduate employment figures, which reveal that 57% of graduates from the class of 2013 landed full-time jobs — a 0.8% increase from the previous year. The number of graduates reporting unemployment, however, is up to 11.2% from 10.6% the year before.

**Apr. 10:** The Justice Department releases a report indicating that the Albuquerque Police Department engaged in pervasive overuse of excessive

and deadly force during encounters with civilians who posed little to no threat. The report finds that the majority of fatal shootings by officers between 2009 and 2012 were unjustified. • The House Oversight and Government Reform Committee votes to hold former IRS official Lois Lerner in contempt of Congress for failing to answer the panel's questions regarding potential IRS targeting of politically conservative groups. Lerner asserted her Fifth Amendment privilege against self-incrimination; Republicans on the panel responded by claiming that she had waived the privilege by making an opening statement proclaiming her innocence at a hearing the previous year. • U.S. District Judge Laura Taylor Swain approves SAC Capital Advisors LP's criminal settlement with the Justice Department, ending a decade-long investigation into the hedge fund. As part of the settlement, the company agreed to pay \$1.8 billion — including a \$900 million criminal penalty (see Nov. 4 entry).

**Apr. 11:** The U.S. Court of Appeals for the Third Circuit vacates hacker Andrew Auernheimer's computer crime conviction, concluding that there was no basis for prosecuting him in New Jersey. The ruling leaves open the possibility of a re-prosecution elsewhere.

**Apr. 15:** President Obama commutes 3.5 years of Cesar Huerta Canta's sentence, concluding that the extra time was based on a typographical error in his sentencing documents (see Jan. 30 entry).

**Apr. 16:** The U.S. Court of Appeals for the Fourth Circuit rules that a company should not have been allowed to anonymously litigate its dispute with the federal Consumer Product Safety Commission. A district judge had allowed "Company Doe" to pursue its claim under a pseudonym, ultimately concluding that the Commission had issued a materially inaccurate safety complaint.

**Apr. 17:** U.S. District Judge Nelva Gonzales Ramos declines to require General Motors to tell owners of cars affected by an ignition-switch recall to park their cars until the ignition issue is fixed. The court concludes that the National Highway Traffic Safety Administration is better suited to oversee the recall process (see Mar. 27 entry). • The trial of Abu Hamza al-Masri, the second major terrorist trial to take place in federal court, begins in New York.

**Apr. 18:** The Virginia Supreme Court rejects the Energy & Environmental Legal Institute's efforts to force the University of Virginia to turn over

emails from a climate scientist who used to work at the school. The scientist had been accused of working to stifle the views of those who do not believe in global warming.

**Apr. 21:** The Supreme Court grants certiorari for the second time in a case now known as *Zivotovsky v. Clinton*, which addresses the constitutionality of a federal statute that allows American citizens born in Jerusalem to list “Israel” as their birthplace on U.S. passports. The case involves separation-of-powers issues, because no President since Harry Truman has officially recognized any country’s sovereignty over Jerusalem. The Court had previously ruled that the question presented in the latest iteration of the case was not a political question outside the jurisdiction of the judicial branch.

**Apr. 22:** The Supreme Court holds, in a 6-2 decision, that Michigan did not violate the Constitution by passing a constitutional amendment banning affirmative action programs. Justice Anthony Kennedy authors the plurality opinion, joined by the Chief Justice and Justice Alito, holding that the Sixth Circuit improperly extended one of the Court’s prior precedents on the political process doctrine, which (generally speaking) bars states from burdening minorities’ access to the channels of political change. Justices Scalia and Clarence Thomas concur, saying that the political process doctrine should be invalidated. Justice Breyer concurs on narrow grounds. Justice Sotomayor, joined by Justice Ginsburg, writes a strongly-worded dissent. Justice Kagan was recused. • The Court hears argument in *ABC, Inc. v. Aereo, Inc.*, on the propriety, under the copyright laws, of a service that allows individuals to watch copyrighted television programs over the internet as they are being broadcast over the air.

**Apr. 23:** The Obama Administration announces the details of a new clemency program, which will allow low-level offenders who are without a significant criminal history, have served at least 10 years in prison, and have no history of violence to seek clemency if they would have received a substantially lower prison term under today’s laws (see Jan. 30 and Apr. 16 entries).

**Apr. 24:** In an interview with the *American Spectator*, Justice Alito opines that law schools put too much emphasis on the LSAT, asking, “What in life is a multiple choice test?”

**Apr. 25:** Northwestern University football players conduct a vote on

whether to unionize, in response to an earlier NLRB decision granting them the right to unionize (see Mar. 26 entry).

**Apr. 28:** The Supreme Court grants review in *Yates v. U.S.*, which presents the question whether a provision of the Sarbanes-Oxley Act that makes it a crime to knowingly destroy “any record, document or tangible object” with the intent to impede an investigation covers throwing undersize fish overboard to avoid a charge for illegally harvesting fish. • A report issued by the Center for Public Integrity asserts that since 2010, federal appellate judges considered more than two dozen cases in which they had a financial conflict. • U.S. Congressman Michael Grimm (R) is indicted on 20 counts, including payroll tax evasion and hiring undocumented workers, for his conduct in running a Manhattan restaurant before being elected to Congress in 2010. Grimm would win reelection in November, and then plead guilty to a single count of tax fraud in December, while vowing that he would not resign his office.

**Apr. 29:** NBA Commissioner Adam Silver announces that Donald Sterling, the owner of the Los Angeles Clippers, will be banned from the NBA for life and fined \$2.5 million for making racist comments.

**Apr. 30:** The Supreme Court issues a revised version of Justice Scalia’s dissent in *EPA v. EME Homer City Generation*, a case concerning the validity of an EPA regulation limiting power-plant emissions crossing state lines. He had accused the EPA of attempting “to convert the Clean Air Act into a mandate for cost-effective regulation,” citing his prior opinion in *Whitman v. American Trucking Associations, Inc.* — only to discover that the trucking associations, and not the EPA, had sought consideration of cost in *Whitman*.

## MAY 2014

**May 1:** Law Day, U.S.A. is celebrated by adoring fans of law throughout the United States. Law Day was first proclaimed by President Dwight Eisenhower in 1958, and was enacted into law in 1961. • The U.S. Court of Appeals for the Federal Circuit denies a motion by plaintiff Two-Way Media LLC to dismiss AT&T’s appeal of the \$40 million patent verdict as untimely. AT&T argued that its lawyers at Sidley Austin LLP missed the appeal deadline because “affirmatively misleading docket notices” led them to believe that some of the post-trial motions in the case had not yet been resolved. At oral argument in December, the Federal Circuit panel

expressed skepticism that attorneys do not have a duty to read the contents of all judicial communications, no matter how they are labeled.

**May 5:** In *Town of Greece v. Galloway*, the Supreme Court holds that the Town of Greece did not violate the Establishment Clause by opening board meetings with prayers from citizens. Justice Kagan, joined by three other Justices, dissents, contending that the prayers at issue were predominantly sectarian, and that the town did not do enough to accommodate minority religions (see Nov. 7 entry).

**May 6:** UBS AG agrees to pay \$358 million to Assured Guarantee Ltd. to settle a lawsuit claiming that UBS falsely overstated the quality of mortgage loans underlying mortgage-backed securities, which began to go bad in 2009. The settlement mirrored one between Assured Guarantee and Bank of America in April 2011, for \$1.1 billion.

**May 9:** President Woodrow Wilson's Mother's Day proclamation — backed by a May 8, 1914 congressional joint resolution requiring that the second Sunday in May be set aside for the purpose — turns 100. • Arkansas Circuit Court Judge Chris Piazza strikes down Arkansas's 2004 constitutional amendment banning same-sex marriages.

**May 15:** The FCC votes 3-2 to re-propose net neutrality rules, following the U.S. Court of Appeals for the D.C. Circuit's decision striking down a previous version of the rules (see Jan. 14 entry).

**May 19:** British cleric Abu Hamza al-Masri is convicted in the U.S. District Court for the Southern District of New York on 11 terrorism-related charges. Al-Masri was accused of orchestrating the kidnappings of 16 American, British, and Australian tourists in Yemen in 1998; attempting to establish a terrorist training camp in Oregon; and supporting terrorism by sending one of his followers to train with Al-Qaeda in Afghanistan (see Apr. 17 entry). • The U.S. District Court for the District of Oregon strikes down Oregon's 2004 ban on same-sex marriage.

**May 20:** The U.S. District Court for the Middle District of Pennsylvania strikes down Pennsylvania's 1996 ban on same-sex marriage.

**May 21:** A court in Geneva, Switzerland awards Elena Rybolovleva, ex-wife of Russian billionaire and "fertilizer king" Dmitry Rybolovlev, \$4.8 billion in the largest divorce award ever recorded. She had previously initiated related court proceedings against him in New York, Florida, and Hawaii to prevent him from transferring assets while the divorce

was pending.

**May 23:** U.S. Rep. John Conyers (D) is restored to the ballot in Michigan to run for his 26th term after Judge Matthew Leitman of the U.S. District Court for the Eastern District of Michigan strikes down Michigan's law requiring that individuals who gather petition signatures be registered to vote, stating that it violates the First Amendment. • The South Dakota Supreme Court denies a motion by ABC and journalist Diane Sawyer to dismiss Beef Products Inc.'s \$1.2 billion suit alleging they defamed its lean finely textured beef product by referring to it as "pink slime" and making other false and disparaging statements about it. The complaint alleges that the negative news coverage caused sales to fall from 5 million pounds of the product per week to just 2 million pounds per week; ABC and Sawyer claim that the lawsuit is preempted by the Agricultural Food Products Disparagement Act.

**May 28:** *Law360* and BPI Consulting Group publish the "Billing Rate Reference 2014," which shows that firms with 400 or more lawyers charge rates that are on average 30% higher than firms with 150 to 399 lawyers, and 54% higher than firms with fewer than 150 lawyers. The average hourly rates at the biggest firms: \$400 for associates, \$581 for partners, and \$724 for senior partners.

**May 30:** Judge Randall Rader steps down as Chief Judge of the U.S. Court of Appeals for the Federal Circuit, after sending a laudatory email to his friend — patent attorney and president of the Federal Circuit Advisory Council Edward Reines — concerning his advocacy before the court, and further encouraging Reines to share the email with others. Rader explains in a letter to his colleagues that his conduct constituted a breach of his ethical obligation not to lend the prestige of his judicial office to advance the private interests of others. In November, the Federal Circuit would reprimand Reines for distributing the email to no fewer than 35 existing and prospective clients. It also referred to California bar authorities allegations that things of value were exchanged between Rader and Reines.

**May 31:** President Obama swaps five detainees held at Guantánamo Bay — including top Taliban officials — for Sgt. Bowe Bergdahl, who had been captured by the Taliban in 2009. The released Guantánamo detainees are required by the terms of the agreement to live in Qatar, which helped facilitate the deal. The transfer of prisoners out of Guantánamo Bay

without 30 days' prior notice to Congress violates a provision of the 2014 Defense Appropriations Act; defenders of the Administration's action consider the notice requirement an unconstitutional infringement on the President's power as Commander-in-Chief (see Aug. 22 entry).

## JUNE 2014

**June 2:** In *Bond v. U.S.*, the Supreme Court holds that Section 229 of the Chemical Weapons Convention Implementation Act of 1998 does not cover a simple assault conviction resulting from a woman's attempt to poison her husband's mistress by spreading chemicals on her doorknob. The Court thus avoids the question of whether the Act is constitutional under the Treaty Clause (see Nov. 6 entry).

**June 4:** In *Burton v. Infinity Capital Management*, the Ninth Circuit holds that attorneys who prepare orders at a judge's direction are not entitled to absolute quasi-judicial immunity, because although drafting such orders "does require the preparer to make important decisions about language and tone," the "ultimate discretion in determining whether an order will be integral to resolving a dispute lies with the judge, not the preparer." If you happen across an attorney who responds to a judge's direction to draft an order by stating: "I've read *Burton*. You have immunity, I don't. Why don't you draft it yourself, Your Honor?", please forward the example to the authors; a *Baggish* award awaits you.

**June 10:** In *Vergara v. California*, L.A. County Superior Court Judge Rolf M. Treu rules that the state's existing teacher tenure system is unconstitutional under the state constitution. He writes, "Evidence has been elicited in this trial of the specific effect of grossly ineffective teachers on students. The evidence is compelling. Indeed, it shocks the conscience."

**June 12:** The U.S. District Court for the Southern District of New York approves an \$18 million class-action settlement in *In re Literary Works in Electronic Databases Copyright Litigation*, a copyright lawsuit brought against Google by The Authors Guild, the American Society of Journalists and Authors, and others in 2000.

**June 18:** In a 2-1 decision, the Trademark Trial and Appeal Board of the U.S. Patent Office revokes six federal trademark registrations owned by the Washington Redskins on the grounds that the term is derogatory. The trademark rights remain in force pending appeal.



**June 19:** The Supreme Court issues its decision in *Alice Corporation Pty. Ltd. v. CLS Bank International*, holding that a computer-implemented scheme for mitigating the risks involved in certain financial transactions is not patentable because it is a patent-ineligible abstract idea.

**June 23:** The Supreme Court decides *Halliburton v. Erica P. John Fund, Inc.* in a unanimous judgment, with a majority opinion by Justice Breyer. The Court declines to overrule the “fraud on the market” presumption relied on by many securities class action plaintiffs, but holds that defendants may attempt to rebut the presumption prior to class certification (see Mar. 5 entry). • A report commissioned by Pennsylvania Attorney General Kathleen G. Kane (D) finds that prosecutors showed a lack of urgency in charging former Penn State assistant coach Jerry Sandusky with sexually abusing children, but that no evidence shows that the prosecution’s pace was affected by then-Attorney-General Tom Corbett’s (R) gubernatorial campaign. Prosecutors respond that their methodical construction of the case against Sandusky is fully justified by his eventual conviction on 45 counts for the abuse. • Egyptian Judge Mohamed Nagy Shehata sentences *Al Jazeera English* reporters Peter Greste (Australian), Mohamed Fahmy (dual Canadian-Egyptian), and Baher Mohamed (Egyptian) to between seven and ten months in jail for endangering Egypt’s national security, falsifying news, and helping terrorists. In July, the judge would explain that “the devil encouraged them to use journalism and direct it toward actions against this nation” by “showing the country — contrary to the truth — in a situation of chaos and upheaval . . . .”

**June 25:** The Supreme Court issues its 6-3 opinion in *ABC Inc. v. Aereo, Inc.*, holding that Aereo infringed on broadcasters’ copyrights by streaming broadcast programs over the internet at the same time they were airing on television. The opinion is essentially the death knell for Aereo (see Apr. 22 entry). • The Court issues a unanimous opinion in *Riley v. California*, holding that officers generally must secure a warrant before searching cell phone data incident to arrest.

**June 26:** In *NLRB v. Noel Canning*, the Supreme Court invalidates the President’s appointment of three NLRB members during a three-day adjournment between two *pro forma* Senate sessions. The Court holds that the President has the constitutional authority to fill any vacancy during any recess of sufficient length, but that the Senate gets to decide when it is in recess, and was not in recess when the challenged appoint-

ments were made (see Jan. 13 entry). • The Court also issues a unanimous judgment in *McCullen v. Coakley*, invalidating a Massachusetts statute making it a crime to stand on a public sidewalk within 35 feet of the entrance to any facility where abortions are performed.

**June 27:** In a Minneapolis speech, President Obama announces that he intends to expand his use of executive powers to enact his policy agenda in the face of congressional intransigence. Acknowledging that some in Congress would object, he states: “So sue me.”

**June 30:** The Supreme Court issues its ruling in *Burwell v. Hobby Lobby Stores, Inc.* In a 5-4 opinion by Justice Alito, the Court holds that the ACA’s so-called “contraceptive mandate” violates the federal Religious Freedom Restoration Act, which generally prohibits the government from substantially burdening a person’s exercise of religion even if the burden results from a generally-applicable rule (see Nov. 1 and 26 entries). • In *Harris v. Quinn*, another 5-4 opinion by Justice Alito, the Court holds that a state may not compel personal care providers to pay the costs that their union incurs in engaging in collective bargaining for better terms of employment. The Court does not overrule *Abood v. Detroit Board of Education* — a precedent on the First Amendment implications of union dues that the petitioners had asked the Court to overrule.

## JULY 2014

**July 2:** The U.S. Court of appeals for the Ninth Circuit rules that the San Francisco Sheriff’s Department may have impermissibly discriminated against male deputies on the basis of sex by barring them from supervising female inmates, holding that the County failed to show that background checks and psychological testing were insufficient means of weeding out male deputies who might engage in sexual misconduct with the inmates.

**July 3:** The Illinois Supreme Court strikes down the State Employee Group Insurance Act of 2012, which required Illinois retirees to pay a portion of their health care premiums, finding that it violated the pension protection clause of the state constitution, which describes membership in a public retirement system as “an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.”

**July 4:** Answering questions on “Mumsnet,” a website advertising itself

as “by parents for parents,” Hillary Rodham Clinton explains that in 1975, while she was working as a lawyer at the University of Arkansas legal aid clinic, she asked to be removed from a case defending a man who was accused of sexually assaulting a 12-year-old-girl, but was nevertheless left on the case. Facing the possibility of 30 years to life in prison, the 41-year-old defendant was ultimately sentenced to a year in county jail and four years of probation. “I had a professional duty to represent my client to the best of my ability, which I did,” Clinton stated.

**July 10:** The Ninth Circuit upholds a \$500 million price-fixing fine against AU Optronics Corp., as well as the conviction of two executives, rejecting arguments that U.S. antitrust law did not extend to AUO’s overseas conduct in fixing the prices of liquid crystal display panels.

**July 14:** Citigroup agrees to a \$7 billion settlement with the U.S. Department of Justice (\$4 billion in penalties, \$2.5 billion in mortgage modifications, and \$500 million for five states and the FDIC) for its conduct in securitizing and selling residential mortgage-backed securities prior to Jan. 1, 2009. The \$4 billion penalty is the largest to date under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).

**July 16:** Reversing a position it took in 2013, the Department of Health and Human Services determines that U.S. territories do not qualify as “states” within the meaning of Title I of the Affordable Care Act, thus exempting them from some of the Act’s requirements. • Judge Cormac J. Carney of the U.S. District Court for the Central District of California rules the California death penalty system is unconstitutional under the Eighth Amendment because it is arbitrary and plagued with delay.

**July 17:** Eric Garner dies in Staten Island, New York, after a police officer puts him in a grappling hold around his neck while making an arrest for illegally selling loose cigarettes. Medical examiners later conclude that the cause of death was “homicide,” meaning that it was caused by a person (specifically, the police officer), but not implying legal culpability. On December 3, 2014, a grand jury chooses not to indict the police officer responsible for the death, sparking widespread protests. • Australia repeals its carbon tax, originally enacted in 2012. The tax was alleged to have caused a 9% increase in power prices in Australia. According to the United Nations Statistics Division, among developed countries Australia has the second-highest per capita carbon emissions in the world, after

Luxembourg, but less than 1/16 the total carbon emissions of China.

**July 21:** President Obama issues an executive order prohibiting the federal government and its contractors from discriminating on the basis of sexual orientation or gender identity. The order does not provide any exemption for religious organizations that object to homosexual conduct. Federal contractors employ approximately 28 million workers in aggregate, making up one fifth of the total American workforce. • U.S. District Judge William Griesbach of the District of Wisconsin dismisses a lawsuit filed by U.S. Senator Ron Johnson challenging the Obama Administration's decision (issued by the Office of Personnel Management (OPM) in September 2013) to subsidize insurance purchased by Members of Congress and their staff in insurance exchanges, despite the absence of any authorization in the Affordable Care Act for such a subsidy. In a *Marbury*-esque ruling, Griesbach says that "If proven, this would be a violation of Article I of the Constitution, which reposes the lawmaking power in the legislative branch," but goes on to hold that Johnson lacks standing to sue: "There is nothing in the Constitution stipulating that all wrongs must have remedies, much less that the remedy must lie in federal court." • Azamat Tazhayakov, a college friend of Boston Marathon bombing suspect Dzhokhat Tsarnaev, is convicted of conspiracy and obstruction of justice, for working with other friends of Tsarnaev to remove a backpack containing altered fireworks from his dorm room shortly after the bombing. Tsarnaev's trial is scheduled for November 2014, with trials of other friends and alleged conspirators scheduled in between.

**July 22:** In *Halbig v. Burwell*, the U.S. Court of Appeals for the D.C. Circuit rules 2-1 that the Obama Administration violated the Affordable Care Act when it provided tax credits for insurance purchased in exchanges established by the federal government. The Act authorizes tax credits only for insurance purchased "through an exchange established by the state"; the Court holds that federally established exchanges do not qualify. • Hours later, the U.S. Court of Appeals for the Fourth Circuit issues a unanimous opinion reaching the opposite conclusion in *King v. Burwell*: "the defendants have the stronger position, although only slightly." • Hajn sues television network A&E for marketing a variety of *Duck Dynasty* merchandise that bears the logo "My Favorite Color Is Camo," based on a statement that Uncle Si Robertson made on the popular show. Hajn alleges the logo violates a trademark it registered in 2011, prior to the

airing of the *Duck Dynasty* series, and that it has been marketing merchandise bearing the logo since that time. • The FAA issues a “Notice to Airmen” (NOTAM) prohibiting U.S. airlines from flying into or out of Israel’s Ben-Gurion International Airport for 24 hours, after a rocket strike lands one mile from the airport.

**July 24:** President Obama announces he is imposing a new round of “major” sanctions on Russia and Russian President Vladimir Putin for Russia’s continued involvement in the destabilization of eastern Ukraine, prohibiting, among other things, U.S. citizens or companies from providing financing to any of several Russian financial institutions, or exporting certain energy-related goods and technologies to Russia.

**July 30:** The U.S. House of Representatives votes 225 to 201, with no Democrats supporting, to sue President Obama for failing to properly enforce the employer mandate in the Affordable Care Act.

**July 31:** The U.S. Senate fails to pass a \$2.7 billion bill to address the surge of unaccompanied minors crossing United States borders. It adjourns the next morning.

## AUGUST 2014

**Aug. 1:** By a vote of 223-189, the U.S. House of Representatives passes a \$694 million emergency border security spending bill to address — via extra border security, immigration judges, National Guard troops, and housing and care — the surge of unaccompanied minors crossing United States borders. President Obama, who had requested \$3.7 billion in immigration-related spending, declares the bill “extreme and unworkable,” and “I’m going to have to act alone.”

**Aug. 8:** In *O’Bannon v. NCAA*, Judge Claudia Wilken of the U.S. District Court for the Northern District of California rules in favor of UCLA basketball player Ed O’Bannon and 19 other plaintiffs, holding that the NCAA’s ban on college athletes’ benefiting from the use of their own image violates antitrust laws, and the NCAA must allow its member schools and conferences to offer football and basketball players at least \$5,000 per year as compensation for the use of their names, images, or likenesses.

**Aug. 9:** Michael Brown is shot and killed by police officer Darren Wilson in Ferguson, Missouri. Some witnesses state that Brown was shot in the

back while attempting to flee; others state that he was shot while attempting to passively surrender with his hands up; and others state that Brown was shot while aggressively charging Wilson, after assaulting Wilson and attempting to take his gun. On November 24, 2014, a grand jury declines to indict Wilson.

**Aug. 10:** During protests arising from Michael Brown's death, more than two dozen businesses in Ferguson, Missouri are damaged, one is set on fire, and 32 people are arrested (see Aug. 9 entry).

**Aug. 15:** Texas Governor Rick Perry is indicted by a Travis County grand jury on two felony counts for allegedly abusing his official power by pressuring Travis County District Attorney Rosemary Lehmborg to resign her office with a threat to veto (and then an actual veto of) state money earmarked for Lehmborg's public integrity unit. Perry allegedly thought it was inappropriate for Lehmborg to continue as the head of the public integrity unit after she served jail time for drunk driving following an unseemly 2013 arrest. • In a lawsuit filed by Judicial Watch, Judge Emmet Sullivan of the U.S. District Court for the District of Columbia orders the IRS to file a sworn declaration by August 22 explaining its efforts to recover lost Lois Lerner emails and its policies for tracking and degaussing hard drives, after finding that previous explanations were insufficient. The Treasury Inspector General for Tax Administration announces in November that it has located as many as 30,000 missing Lerner emails on backup disaster recovery tapes that the IRS never searched (see Apr. 14 entry).

**Aug. 16:** Missouri Governor Jay Nixon declares a state of emergency in Ferguson and sets a midnight-to-5:00 a.m. curfew. Two days later, he sends in the National Guard (see Aug. 9 and 10 entries).

**Aug. 22:** The Government Accountability Office (GAO) concludes that President Obama's transfer of five Taliban detainees out of Guantánamo Bay in exchange for Sgt. Bowe Bergdahl in May 2014 clearly and unambiguously violated Section 8111 of the Department of Defense Appropriations Act of 2014, as well as the Antideficiency Act (see May 31 entry).

**Aug. 25:** The House of Representatives announces that it has hired David Rivkin of Baker Hostetler to represent it in its lawsuit against President Obama, at a rate of \$500 per hour. Rivkin and Baker Hostetler withdraw from the representation less than a month later, amid rumors of pressure

from clients to drop the case, and shortly after comedian Jimmy Fallon ran a parody ad on the Tonight Show that declared: "At Baker Hostetler, we specialize in one thing: suing the President." After a brief interlude during which William Burck of Quinn Emanuel is retained for the representation, but also drops it, the House ultimately hires GWU law professor Jonathan Turley; the lawsuit is finally filed on November 21, 2014.

## SEPTEMBER 2014

**Sept. 1:** According to an ABA report, only 37,924 people begin their first year of law school in the fall of 2014, down 4% from 2013, and down from a peak first-year enrollment of 52,488 in 2010.

**Sept. 4:** The U.S. Department of Justice announces it has opened a civil investigation of the Ferguson, Missouri police (see Aug. 9, 10, and 16 entries). • The full United States Court of Appeals for the D.C. Circuit accepts the government's request to vacate the earlier panel ruling in *Halbig v. Burwell*, and sets the case for en banc review (see July 22 entry). • Just nine days after oral arguments, the U.S. Court of Appeals for the Seventh Circuit affirms lower court rulings invalidating same-sex marriage bans in Wisconsin and Indiana.

**Sept. 5:** Judge Mark Fuller of the U.S. District Court for the Middle District of Alabama agrees to enter substance abuse and domestic violence counseling, after being charged with beating his wife. • The U.S. Department of Labor issues a report indicating that there are 1,139,000 legal-sector jobs in the United States. Legal-sector employment has grown each year since 2009, when total employment stood at 1,103,700 at year's end.

**Sept. 8:** The Baltimore Ravens release Ray Rice, and NFL Commissioner Roger Goodell extends Rice's July 2014 two-game suspension indefinitely, following a furor after a video of Rice striking his wife (then-fiancée) Janay in an elevator in February 2014 goes public. In November the indefinite extension is overturned as arbitrary by a former federal district judge serving as an arbitrator.

**Sept. 11:** President Obama announces a fourth round of sanctions on Russia for its conduct in destabilizing eastern Ukraine, tightening restrictions on debt financing for Russia's financial institutions and exports to Russia's energy and defense sectors.

**Sept. 18:** The Kansas Supreme Court grants Democrat Chad Taylor's re-

quest to be removed from the ballot as a candidate for U.S. Senate, over the Secretary of State's objection that he had not given a sufficient reason for his withdrawal. The decision leaves Independent Greg Orman as the main challenger to Republican incumbent Pat Roberts.

**Sept. 23:** In an interview in *Elle* magazine, Justice Ginsburg is asked whether she will resign from the Supreme Court while President Obama is in office. She replies: "If I resign any time this year, he could not successfully appoint anyone I would like to see in the Court. . . . So anybody who thinks that if I step down, Obama could appoint someone like me, they're misguided. As long as I can do the job full steam —. I think I'll recognize when the time comes that I can't any longer. But now I can."

**Sept. 24:** The U.S. Court of Appeals for the Seventh Circuit overturns an injunction entered by the U.S. District Court for the District of Wisconsin in May 2014 that blocked Wisconsin state prosecutors from continuing a "John Doe" criminal investigation into suspected violations of Wisconsin campaign finance laws, on the grounds that the injunction violated the Anti-Injunction Act. "John Doe" criminal proceedings can be initiated without naming a target, but news reports suggest the investigation seeks to establish illegal coordination between political advocacy group Wisconsin Club for Growth and the election campaign of Wisconsin Governor Scott Walker. • Chelsea (formerly Bradley) Manning, famed Wikileaker serving a 35-year sentence in Fort Leavenworth, sues the Department of Defense for access to hormone therapy for gender dysphoria, stating in court filings "I do not believe I will be able to survive" without it.

**Sept. 25:** Eric Holder announces that he will step down as Attorney General. • Sohiel Omar Kabir and Ralph Deleon are convicted in the U.S. District Court for the Central District of California of providing material support to terrorists and conspiring to kill officers and employees of the U.S. government, after plotting in 2012 to fly overseas for the purpose of committing violent jihad.

**Sept. 30:** California Governor Jerry Brown signs into law the first statewide ban on plastic bags in grocery stores.

## OCTOBER 2014

**Oct. 3:** Dallas County Judge Clay Jenkins, personally and without protec-



tive equipment, escorts the girlfriend of Ebola victim Thomas Duncan and three others from the cramped apartment in which they had been quarantined — amidst Duncan's sweat-soaked sheets — to a donated four-bedroom home.

**Oct. 6:** The Supreme Court kicks off October Term 2014 with argument in *Heien v. North Carolina*, which presents the question whether a police officer's mistake of law can give rise to reasonable suspicion justifying a seizure (in particular, a traffic stop) under the Fourth Amendment. The Court denies review of seven decisions invalidating same-sex marriage bans in Indiana, Wisconsin, Utah, Oklahoma, and Virginia.

**Oct. 7:** The U.S. Court of Appeals for the Ninth Circuit affirms a district court ruling invalidating Idaho's 1995 legislative ban and 2006 constitutional ban on same-sex marriage, and reverses a 2012 district court ruling upholding Nevada's 2000 constitutional ban on same-sex marriage.

**Oct. 8:** Minnesota Vikings running back Adrian Peterson appears in a Montgomery County, Texas courtroom to face a charge of felony child abuse for using a wooden switch to discipline his four-year-old son, a charge that carries up to two years in prison if he is convicted. In November, Peterson pleads no contest to one count of misdemeanor reckless assault. He is required to pay a \$4000 fine and perform 80 hours of community service, and is placed on probation.

**Oct. 12:** The United States District Court for the District of Alaska strikes down Alaska's 1998 ban on same-sex marriage.

**Oct. 14:** Deputy Attorney General James M. Cole announces in a memorandum to all federal prosecutors that they should no longer ask criminal defendants who plead guilty to waive their right to claim on appeal that their attorney was ineffective.

**Oct. 16:** Over the coming months, more than 20 will publicly accuse Bill Cosby of having raped them, frequently using sedating drugs, with the earliest incidents alleged to have occurred in the 1960s.

**Oct. 17:** The U.S. District Court for the District of Wyoming strikes down Wyoming's ban on same-sex marriage. • The U.S. District Court for the District of Arizona strikes down Arizona's ban on same-sex marriage. Arizona Attorney General Tom Horne states that he will not appeal the ruling, because "It would be unethical for me to file an appeal that would have no chance of success."

**Oct. 20:** President Obama tells *The New Yorker* that his favorite Supreme Court decision of his tenure was its denial of certiorari just weeks earlier of several decisions striking down bans on same-sex marriage (see Oct. 6 entry). Eschewing any desire to walk in the footsteps of President William Howard Taft, he also declares that the life of a Supreme Court Justice would be “too monastic” for his taste.

**Oct. 23:** Judge Reggie Walton of the U.S. District Court for the District of Columbia dismisses a lawsuit brought by True the Vote against the IRS, finding that there is no ongoing controversy because the IRS has pledged that it is no longer selecting tax exemption applications for greater scrutiny based on applicants’ political leanings. The ruling left open the possibility that two plaintiffs whose applications still had not been ruled on after 270 days (Patriots Educating Concerned Americans Now and the Liberty Township Tea Party) might have standing to sue.

**Oct. 26:** Nurse Kaci Hickox, quarantined by New Jersey after returning from treating Ebola patients in West Africa, threatens to file a federal lawsuit challenging her confinement as a violation of her civil rights. Shortly thereafter, Hickox is permitted to travel to her boyfriend’s home in Maine, where she openly flouts Maine’s quarantine restrictions.

**Oct. 27:** Pennsylvania Supreme Court Justice Seamus McCaffery, the former “Eagles Court” judge who served out speedy justice in the basement of Veterans Stadium on Philadelphia Eagles’ game days, resigns from the Pennsylvania Supreme Court amid accusations that he sent or received 234 pornographic emails using an official account, and attempted to blackmail fellow Justice Michael Eakin. McCaffery had been relieved of his duties by the other Justices of the court on October 20.

**Oct. 28:** Robel Phillipos, a friend of Boston Marathon bombing suspect Dzhokhar Tsarnaev, is convicted on two counts of lying to investigators about a terrorism investigation. Phillipos is not alleged to have participated in the bombing, but is accused of lying to the FBI when he told them that he could not remember being in Tsarnaev’s dorm room immediately after the bombing occurred. His defense team unsuccessfully argued that he had used too much marijuana that day to remember what had happened.

**Oct. 30:** Leon County Judge Judith Hawkins calls a five-minute recess and leaves the courthouse after receiving word that the Florida Supreme

Court has removed her from office; she is replaced on the bench within minutes by County Judge Ronald Flury, who asks the waiting courtroom litigants: “Y’all want to tell me what’s going on?” The Florida Judicial Qualifications Commission had sought to have Hawkins fined and suspended for using her position as a judge to sell religious products at the courthouse and through a website that featured Hawkins wearing her robes; the Florida Supreme Court deemed the conduct dishonest and deceitful and removed her from office instead.

**Oct. 31:** Judge Charles LaVerdiere declines to quarantine Kaci Hickox in her home, ruling she does not pose a sufficient health risk to justify such confinement, but requires that she coordinate all travel with state public health officials and submit to daily monitoring for symptoms. In his order, the judge criticizes “misconceptions, misinformation, bad science, and bad information being spread from shore to shore in our country with respect to Ebola” (see Oct. 26 entry).

## NOVEMBER 2014

**Nov. 3:** Former third-ranking UBS executive Raoul Weil is acquitted on charges of tax evasion by a jury in the U.S. District Court for the Southern District of Florida. The IRS accused Weil of establishing sham structures to help 17,000 U.S. clients conceal \$20 billion in assets from the IRS. UBS had paid \$780 million in fines and provided the names of numerous clients to the IRS in 2009 as part of a settlement relating to the same underlying conduct.

**Nov. 4:** On election day, Republicans pick up eight seats in the U.S. Senate (a ninth is added in December when Mary Landrieu loses a runoff in Louisiana), giving them a majority for the first time since 2006, and 13 seats in the House of Representatives, bringing them to 247 (the largest GOP majority since 1929); two governorships (bringing their total to 31); and 11 state legislative chambers (bringing their total to 68, the highest ever). • Voters consider 158 statewide ballot questions (146 are actually decided on November 4), the lowest number since 1988. They approve 102 and reject 56. Among them: Colorado and Oregon reject required labeling of genetically modified foods; Alaska, Oregon, and DC legalize recreational marijuana use, while Florida rejects medical marijuana for debilitating diseases; Alaska, Arkansas, Nebraska, and South Dakota

raise the minimum wage (Alaska raises it the most, to \$8.75 in 2015 and \$9.75 in 2016), and Illinois approves it in concept; California rejects raising the cap on pain-and-suffering awards in medical malpractice cases; Oregon rejects drivers licenses for undocumented residents; Washington requires universal background checks on gun purchases; and Tennessee bans personal income taxes, while Massachusetts rejects automatic increases in gas taxes. • Orleans Parish Criminal Court Judge Frank Marullo, Louisiana's longest-serving judge, is elected to another term in office. But because voters defeat a ballot measure that would have eliminated a constitutional requirement that judges retire by age 70, he is too old to serve. • The U.S. District Court for the District of Kansas invalidates Kansas's 1996 legislative and 2005 constitutional bans on same-sex marriage.

**Nov. 5:** The St. Louis City Circuit Court invalidates Missouri's 2004 constitutional ban on same-sex marriage. • At a post-election press conference, President Obama proclaims that "I feel obliged to do everything I can lawfully with my executive authority to make sure that we don't keep on making the [immigration] system worse," but promises that any executive action he implements will expire upon Congress's passage of a comprehensive immigration reform bill.

**Nov. 6:** A divided panel of the U.S. Court of Appeals for the Sixth Circuit reverses lower court rulings in cases from Kentucky, Michigan, Ohio, and Tennessee, and upholds those states' bans on same-sex marriage. Writing for the majority, Judge Jeffrey Sutton says, "When the courts do not let the people resolve new social issues like this one, they perpetuate the idea that the heroes in these change events are judges and lawyers. Better, in this instance, we think, to allow change through the customary political processes, in which the people, gay and straight alike, become the heroes of their own stories by meeting each other not as adversaries in a court system but as fellow citizens seeking to resolve a new social issue in a fair-minded way." The decision creates a split with the Fourth, Seventh, Ninth, and Tenth Circuits, and sets the stage for potential Supreme Court review.

**Nov. 7:** The Supreme Court grants certiorari in *King v. Burwell*, returning the Affordable Care Act to its docket. Commentators express some surprise, since the D.C. Circuit's decision to vacate the panel ruling in *Halbig v. Burwell* and take it en banc left no circuit split on the issue (see July 22 and Sept. 4 entries).

**Nov. 8:** President Obama nominates Loretta Lynch, the United States Attorney for the Eastern District of New York, to serve as Attorney General.

**Nov. 10:** The District Court for Oklahoma County, Oklahoma orders Harold Hamm, CEO and majority shareholder of Continental Resources, to pay nearly \$1 billion to his ex-wife, Sue Ann Hamm. When they married in 1988, Harold Hamm was only worth several million dollars, rather than the \$18 billion he is worth today; no prenuptial agreement was in place.

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