

2014

2014-2015 Supreme Court Preview: Contents

Institute of Bill of Rights Law at The College of William & Mary School of Law

Repository Citation

Institute of Bill of Rights Law at The College of William & Mary School of Law, "2014-2015 Supreme Court Preview: Contents" (2014). *Supreme Court Preview*. 249.
<https://scholarship.law.wm.edu/preview/249>

2014-2015 Supreme Court Preview

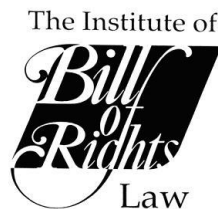
The Institute of Bill of Rights Law

THE INSTITUTE OF BILL OF RIGHTS LAW was established at William & Mary in 1982 to support research and education on the Constitution and the Bill of Rights. One of the principal missions of the Institute is to facilitate interaction between the professions of law and journalism. Through a discussion of key cases on the Supreme Court's docket at the start of each term, the annual SUPREME COURT PREVIEW provides in-depth education for journalists on the underlying issues to enhance press coverage of the decisions.

NEAL DEVINS
Goodrich Professor of Law
Director of the Institute of Bill of Rights Law

MELODY S. NICHOLS
Assistant Director of the Institute of Bill of Rights Law

Student Editors
VIOLET BOGGS
SARAH MERRILL



THE COLLEGE OF WILLIAM & MARY
SCHOOL OF LAW
WILLIAMSBURG, VIRGINIA 23187-8795
(757) 221-3810 • FAX (757) 221-3775
IBRL@wm.edu • <http://www.IBRL.org>

2014-2015 Supreme Court Preview

Table of Contents

Introduction

In This Section:

Schedule of Events	p. i
Panel Members	p. ii

I. Moot Court: *King v. Burwell*

In This Section:

New Case: <i>Halbig v. Burwell</i> (looking ahead)	p. 2
Synopsis and Questions Presented	p. 2
New Case: <i>King v. Burwell</i> (looking ahead)	p. 24
Synopsis and Questions Presented	p. 24
“LAWYERS CHALLENGING HEALTH SUBSIDIES SEEK QUICK SUPREME COURT RULING” David G. Savage	p. 39
“HALBIG, KING DECISIONS OVERTURNING SUBSIDIES MAY HINDER ACA IMPLEMENTATION” Wolters Kluwer	p. 41
“AFTER HEALTH LAW RULINGS, HERE ARE POSSIBLE NEXT STEPS” Margot Sanger-Katz	p. 43
“SUPREME COURT COULD HEAR OBAMACARE SUBSIDY FEUD” CNBC Business	p. 45
“BY ANY MEANS NECESSARY” Linda Greenhouse	p. 49

II. Congress & the Obama White House

In This Section:

New Case: 13-628 <i>Zivotofsky v. Kerry</i>	p. 54
--	-------

Synopsis and Questions Presented	p. 54
“U.S. SUPREME COURT TO REVIEW JERUSALEM BIRTHPLACE LAW” Lawrence Hurley	p. 70
“LAW GIVING JERUSALEM-BORN U.S. CITIZENS AN ISRAELI BIRTHPLACE UNDER REVIEW” Bill Mears	p. 72
“COURT BARS ‘JERUSALEM, ISRAEL’ AS BIRTHPLACE ON AMERICAN PASSPORTS” Alexei Koseff	p. 74
New Topic: Congress & the Obama White House	p. 76
“SUPREME COURT REBUKES OBAMA ON RIGHT OF APPOINTMENT” Adam Liptak	p. 76
“THE SUPREME COURT’S NOEL CANNING DECISION AND THE NLRB’S RESPONSE” Mark L. Shapiro, David Santeusanio & Brian M. Doyle	p. 80
“COUNSEL RESTS” Neal Devins	p. 84
“HOUSE VOTES TO AUTHORIZE BOEHNER TO SUE OBAMA” Michael R. Crittenden & Colleen McCain Nelson	p. 88
“CONSTITUTION CHECK: COULD THE HOUSE SUE THE PRESIDENT FOR REFUSING TO CARRY OUT THE LAWS?” Lyle Denniston	p. 91
“THE SUPREME COURT’S POWERFUL NEW CONSENSUS” Neal K. Katyal	p. 94
“WITH FILIBUSTER THREAT GONE, SENATE CONFIRMS TWO PRESIDENTIAL NOMINEES” Jeremy W. Peters	p. 96
“SENATE CONFIRMS OBAMA NOMINEE UNDER NEW FILIBUSTER RULES, WORLD DOESN’T END” Jennifer Bendery	p. 98

III. Civil Rights

In This Section:

New Case: 12-1226 <i>Young v. United Parcel Service</i>	p. 100
Synopsis and Questions Presented	p. 100
“UP NEXT FOR THE SUPREME COURT: PREGNANT WORKERS’ RIGHTS” Nia-Malika Henderson	p. 111
“JUSTICES COULD CLARIFY PREGNANCY ACCOMMODATION IN UPS SUIT” Scott Flaherty	p. 113
“PROTECTIONS FOR PREGNANT WORKERS EXPAND BEFORE KEY SUPREME COURT CASE” Josh Eidelson	p. 116
“A PREGNANT WORKER’S DAY IN COURT” Ariela Migdal	p. 117
New Case: 13-895 <i>Alabama Legislative Black Caucus v. Alabama (consolidated cases)</i>	p. 118
Synopsis and Questions Presented	p. 118
“COURT TO REVIEW ALABAMA’S ‘RACE-BASED’ REAPPORTIONMENT” Robert Barnes	p. 221
“BLACK GROUPS TELL SUPREME COURT ALA. DISTRICTS BIASED” Mary Troyan	p. 223
“FEDERAL JUDGES RULE THAT STATE LEGISLATIVE DISTRICT LINES DON’T VIOLATE VOTING RIGHTS ACT” Robert Carter	p. 225
“THE LEAGUE OF DANGEROUS MAPMAKERS” Robert Draper	p. 226
New Topic: Affirmative Action after <i>Fisher v. Texas</i>	p. 237
“FISHER VS. TEXAS DISMISSED AGAIN; IS IT HEADED BACK TO SUPREME COURT?” Daniel Fisher	p. 237
“FINALLY! THE FISHER DECISION IN PLAIN ENGLISH” Amy Howe	p. 240

“AFFIRMATIVE ACTION FADING FROM COLLEGE SCENE” Greg Toppo	p. 242
New Topic: Admitting Privileges and the Future of Abortion Regulation	p. 245
“ADMITTING-PRIVILEGES LAWS HAVE CREATED HIGH HURDLE FOR ABORTION PROVIDERS TO CLEAR” Sandhya Somashekhar	p. 245
“MS ADMITTING PRIVILEGE LAW STRUCK DOWN BY 5 TH CIRCUIT” Jonathan F. Will	p. 248
“FIFTH CIRCUIT UPHOLDS CONTROVERSIAL TEXAS ABORTION LAW” Jonathan H. Adler	p. 251
“THE FIGHT TO CRIMINALIZE EARLY-TERM ABORTIONS: NEW RULINGS IN TEXAS AND OKLAHOMA COULD CHALLENGE THE LAST REMNANT OF ROE V. WADE” Dahlia Lithwick	p. 252

IV. Business

In This Section:

New Case: 13-433 <i>Integrity Staffing Solutions, Inc. v. Busk</i>	p. 256
Synopsis and Questions Presented	p. 256
“AMAZON WAREHOUSE WORKER PAY SUIT HEADS TO SUPREME COURT” Claire Zillman	p. 262
“SUPREME COURT MAY FINALLY CLARIFY COMPENSABLE TIME” Kenneth W. Gage	p. 264
“AMAZON WORKERS WANT PAY FOR TIME SPENT AT SECURITY CHECKPOINT” Aaron Kase	p. 268
“FLSA ACTION CAN COEXIST WITH STATE CLASS CLAIMS: 9 TH CIRC.” Ben James	p. 270
New Case: 13-894 <i>Department of Homeland Security v. MacLean</i>	p. 272
Synopsis and Questions Presented	p. 272

“SUPREME COURT TO DECIDE WHETHER AIR MARSHAL SHOULD BE PROTECTED AS WHISTLEBLOWER” Robert Barnes	p. 280
“IS HIKE IN WHISTLEBLOWER CLAIMS A SIGN OF PROGRESS OR GROWING MISTRUST?” Jack Moore	p. 282
“FED. CIRC. UPS PROTECTION FOR WHISTLEBLOWERS’ DISCLOSURES” Bill Donahue	p. 285
New Case: 13-485 <i>Comptroller v. Wynne</i>	p. 287
Synopsis and Questions Presented	p. 287
“SUPREME COURT AGREES TO HEAR LANDMARK CASE ON WHETHER STATES MAY TAX INCOME EARNED IN OTHER STATES” Kelly Phillips Erb	p. 303
“SUPREME COURT TO HEAR MARYLAND DOUBLE TAXATION CASE” Joseph Henchman	p. 306
“THE RESIDENT INCOME TAX CREDIT: DID MARYLAND MISAPPLY THE COMMERCE CLAUSE?” Robert J. Firestone	p. 308
New Case: 13-1080 <i>Department of Transportation v. Association of American Railroads</i>	p. 317
Synopsis and Questions Presented	p. 317
“SUPREME COURT TO REVIEW AMTRAK ROLE IN SETTING RAIL REGULATIONS: HIGH COURT TO HEAR CHALLENGE BY FREIGHT RAILROADS” Brent Kendall	p. 327
“SUPREME COURT TO CONSIDER USDOT VS. AAR RE: AMTRAK” William C. Vantuono	p. 328
“AMTRAK BARRED FROM REGULATING FREIGHT RAILROADS ON DELAYS” Angela Greiling Keane & Tom Schoenberg	p. 330
“A NEW PRIVATE DELEGATION DOCTRINE?” Alexander Volokh	p. 332
New Case: 13-1032 <i>Direct Marketing Association v. Brohl</i>	p. 338
Synopsis and Questions Presented	p. 338

“HIGH COURT TO HEAR APPEAL OVER COLORADO ‘AMAZON TAX’ LAW” Drew Singer	p. 351
“SUPREME COURT TO HEAR DMA PRIVACY SUIT, REVIEW COLORADO WEB TAX SALES STATUTE” Alexander Ripps	p. 353
“TENTH CIRCUIT: TAX INJUNCTION ACT PRECLUDED FEDERAL JURISDICTION IN COLORADO’S E-COMMERCE USE TAX REPORTING REQUIREMENTS CASE” Ellen Buckley	p. 355
New Case: 12-1497 <i>Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter</i>	p. 356
Synopsis and Questions Presented	p. 356
“US SUPREME COURT AGREES TO ADDRESS TWO IMPORTANT FALSE CLAIMS ACT ISSUES” Jonathan G. Cedarbaum & Daniel S. Volchok	p. 377
“SUPREME COURT TO HEAR APPEAL OF KBR OVER FALSE CLAIMS ACT LAWSUIT” Eric Young	p. 379
“THE SUPREME COURT WILL REVIEW FOURTH CIRCUIT DECISION THAT WEAKENED THE FALSE CLAIMS ACT’S STATUTE OF LIMITATIONS AND FIRST-TO-FILE BAR” Patrick M. Hagan & Brent D. Craft	p. 381
“HALLIBURTON, KBR WHISTLE-BLOWER’S CASE REVIVED ON APPEAL” Tom Schoenberg	p. 384

V. First Amendment

In This Section:

New Case: 13-983 <i>Elonis v. United States</i>	p. 386
Synopsis and Questions Presented	p. 386
“ON THE NEXT DOCKET: HOW THE FIRST AMENDMENT APPLIES TO SOCIAL MEDIA ” Adam Liptak	p. 399

“ARE FACEBOOK THREATS REAL? THE SUPREME COURT WILL SOON DECIDE.” Dahlia Lithwick	p. 401
“TRUE THREATS” David L. Hudson Jr.	p. 404
“3 RD CIR. RE-EXAMINES 1 ST AMENDMENT TRUE THREAT EXCEPTION” Gabriella Khorasanee	p. 409
New Case: 13-6827 <i>Holt v. Hobbs</i>	p. 411
Synopsis and Questions Presented	p. 411
“SUPREME COURT AGREES TO WEIGH AN INMATE’S RIGHT TO GROW A BEARD FOR RELIGIOUS REASONS ” Adam Liptak	p. 413
“U.S. JUSTICES SAY INMATE CAN KEEP BEARD WHILE CONTESTING POLICY” Lawrence Hurley	p. 414
New Case: 13-502 <i>Reed v. Town of Gilbert, Arizona</i>	p. 415
Synopsis and Questions Presented	p. 415
“U.S. SUPREME COURT WILL HEAR ARIZONA CHURCH-SIGN CASE ” Parker Leavitt	p. 434
“REED V. TOWN OF GILBERT: AN IMPORTANT FIRST AMENDMENT CONTENT DISCRIMINATION CASE, TO BE HEARD BY THE COURT THIS COMING YEAR” Eugene Volokh	p. 436
“BORN (AGAIN) UNDER A BAD SIGN: NINTH CIRCUIT UPHOLDS ORDINANCE RESTRICTING DURATION, LOCATION, QUANTITY, AND SIZE OF DIRECTIONAL SIGNS FOR CHURCH SERVICES” William W. Abbott	p. 441
New Topic: <i>Hobby Lobby</i> Follow-Up	p. 443
“WHAT THE HOBBY LOBBY RULING MEANS FOR AMERICA” Binyamin Appelbaum	p. 443
“FAULT LINES RE-EMERGE IN U.S. SUPREME COURT AT END OF TERM” Joan Biskupic	p. 446
“AFTER HOBBY LOBBY, BUSINESS REVIVES CONTRACEPTION FIGHT” Kenny Knaub	p. 448

“WHAT HOBBY LOBBY SHOWS US ABOUT THE SUPREME COURT AND CIVIL RIGHTS LAWS: WINNERS AND LOSERS IN THE ROBERTS COURT” Elliot Minberg	p. 450
“SATANISTS TROLL HOBBY LOBBY” Emma Green	p. 454
“RULES FOR BIRTH-CONTROL MANDATE AFTER HOBBY LOBBY” Lyle Denniston	p. 457
“COURT RULES AGAINST NOTRE DAME IN CONTRACEPTION CASE” Louise Radnofsky & Brent Kendall	p. 459
“DID LITTLE SISTERS OF THE POOR WIN OR LOSE AT THE SUPREME COURT” Emily Bazelon	p. 461

VI. Criminal

In This Section:

New Case: 13-604 <i>Heien v. North Carolina</i>	p. 465
Synopsis and Questions Presented	p. 465
“U.S. SUPREME COURT CONSIDERS WHETHER THE FOURTH AMENDMENT ALLOWS REASONABLE MISTAKES OF SUBSTANTIVE LAW” Sherry F. Colb	p. 474
“CAN A POLICE OFFICER LAWFULLY PULL OVER A CAR FOR A TRAFFIC VIOLATION BASED ON AN ERRONEOUS UNDERSTANDING OF THE TRAFFIC LAWS?” Orin Kerr	p. 481
New Case: 13-7451 <i>Yates v. United States</i>	p. 484
Synopsis and Questions Presented	p. 484
“TOP U.S. COURT TO HEAR WHITE-COLLAR CASE OF FISH THROWN OVERBOARD” Lawrence Hurley	p. 489
“FISHY APPLICATION OF SARBANES-OXLEY’S BAN ON EVIDENCE DESTRUCTION” William Peacock	p. 491
“FISH NOT TANGIBLES UNDER SOX, DEFENSE GROUPS TELL JUSTICES” Carolina Bolado	p. 493

“COMMERCIAL FISHERMAN’S CONVICTION FOR DISPOSING OF HIS CATCH OF UNDERSIZED GROUPER UPHELD” <i>The Swartz Law Firm</i>	p. 495
New Topic: Death Penalty Protocols	p. 497
“COURT EXTENDS CURBS ON THE DEATH PENALTY IN A FLORIDA RULING” Adam Liptak	p. 497
“ARIZONA EXECUTION WILL MOVE FORWARD AFTER LAST-MINUTE APPEALS” Josh Sanburn	p. 500
“ARIZONA KILLER TAKES TWO HOURS TO DIE, FUELING LETHAL INJECTION DEBATE” Matt Pearce, Cindy Carcamo, & Maya Srikrishnan	p. 502
“ONE EXECUTION BOTCHED, OKLAHOMA DELAYS THE NEXT” Erik Eckholm	p. 505
“GAMBLING WITH DEATH: IS THE SUPREME COURT POISED TO ABOLISH THE DEATH PENALTY?” Evan Mandery	p. 509
“CAN THE DEATH PENALTY SURVIVE LETHAL INJECTION?” Tierney Sneed	p. 512

VII. Same-Sex Marriage

In This Section:

New Case: <i>Bostic v. Shaefer</i> (looking ahead)	p. 516
Synopsis and Questions Presented	p. 516
New Case: <i>Kitchen v. Herbert</i> (looking ahead)	p. 542
Synopsis and Questions Presented	p. 542
“THE MARRIAGE RULING ‘STREAK’ AND WHAT IT MEANS, MADE SIMPLE” Lyle Denniston	p. 570
“COMPARING TWO FEDERAL APPELLATE COURT DECISIONS ON SAME-SEX MARRIAGE” David S. Kemp	p. 573
“VIRGINIA WANTS GAY MARRIAGE BAN REVIEW BY SUPREME COURT” Andrew Harris	p. 576

“SUPREME COURT BLOCKS VIRGINIA SAME-SEX MARRIAGES” Chris Johnson	p. 578
“FOURTH CIRCUIT CALLS VIRGINIA’S GAY MARRIAGE BAN “SEGREGATION,” STRIKES IT DOWN” Mark Joseph Stern	p. 581
“READING THE COURT’S SIGNALS ON SAME-SEX MARRIAGE” Lyle Denniston	p. 583
“ACLU OPPOSES TIME EXTENSION IN UTAH’S SAME-SEX RECOGNITION CASE” Marissa Lang	p. 587
“UTAH SEEKS U.S. SUPREME REVIEW TO REVIVE GAY-MARRIAGE BAN” Joel Rosenblatt	p. 589
“10 TH CIRCUIT UPHOLDS SAME-SEX MARRIAGE” Jessica Miller, Kristen Stewart, & Pamela Manson	p. 591