12-29-2015

# 5 Legal Developments You May Have Missed in 2015

Donald Roth
*Dordt College*, donald.roth@dordt.edu

## 5 Legal Developments You May Have Missed in 2015

### Abstract
Posting summarizing important, but less headline-making, developments in American law during the past year from *In All Things* - an online hub committed to the claim that the life, death, and resurrection of Jesus Christ has implications for the entire world.

http://inallthings.org/5-legal-developments-you-may-have-missed-in-2015/

### Keywords
In All Things, United States, Supreme Court, labor, taxes, foreign policy, human rights, health care

### Disciplines
Law

### Comments
*In All Things* is a publication of the Andreas Center for Reformed Scholarship and Service at Dordt College.

# 5 Legal Developments You May Have Missed in 2015

inallthings.org/5-legal-developments-you-may-have-missed-in-2015/

Donald Roth

It's that time of year again when commentators all over the internet will be making lists rounding up important and not so important trends, events, and developments from this past year. As the unofficial legal correspondent for iAt, it's natural that I would write about developments in the law over the past year, and it's definitely been a big year in terms of court decisions, legislation, and regulation. In fact, I think it's been such a big year that talking about the top legal developments of 2015 might be somewhat boring. We all know that the list would include things that iAt has covered this year, like gay marriage, RFRA, and net neutrality, along with other major developments that we haven't written on, like the Iran Nuclear Deal or the Trans Pacific Partnership. However, there are a number of legal developments over the past year which haven't received as much attention, so, out of my interest in legal education and desire to be slightly more interesting, here are five examples from 2015 which, despite their importance, may have flown under your radar.

**Honorable Mention: The U.S. Department of Labor raises the threshold for FLSA exemption.**

First up is a development of potentially huge impact that's disqualified from the list proper for two reasons: I've written about it before on iAt, and the Department of Labor recently quietly bumped the rollout of these changes back to "late 2016." However, I think this issue still deserves some mention if only because of how significant of an impact it may have on the working conditions of millions of American workers.

The Fair Labor Standards Act (FLSA) exempts certain employees from overtime pay requirements. In simplified terms, this is the difference between being "hourly" or "salaried," and the Department of Labor is about to more than double the threshold salary that divides those two categories so that only workers making more than $50,440 qualify as "salaried."[1])

This issue matters because the change in designation could mean more money for some employees and significant restrictions on workplace flexibility for others. The Department of Labor seems to have delayed implementation of the new rules partly as a reaction to the backlash that the announcement elicited, but there's no doubt that this issue could significantly change the nature of employment for a large portion of the American workforce.

**5. The Supreme Court clarifies Presidential power in foreign policy.**

This past June, the Supreme Court issued its opinion in the *Zivotofsky v. Kerry*, a case involving a conflict between the U.S. Congress and President Obama over the realm of foreign policy. Specifically, Congress passed the Foreign Relations Authorization Act of 2003 which, in part, directed the Secretary of State to, on request, list "Israel" as the place of birth for U.S. Citizens born in Jerusalem. This directly contradicted longstanding presidential policy of not recognizing any one nation's claim to the city, and the directive to the Secretary of State, who answers directly to the President, had the effect of trying to trump this executive policy.

In a 6-3 decision, the Supreme Court ruled that the President has exclusive authority when it comes to recognizing the legitimacy of other countries, and the majority reasoned that this power extends to issues regarding the recognized designation of national boundaries.

This issue may seem important only to Constitutional law nerds, but let me defend my kind a little. The powers of the various branches of government, in particular their relative checks and balances, are an absolutely essential part of what makes America tick; however, the exact contours of presidential power are frustratingly vague in the Constitution itself. Previously, one of the most important decisions about the relation of presidential power was *Youngstown Sheet & Tube Co. v. Sawyer*, which, in Justice Jackson's concurrence, talked about presidential power in three "zones" divided by whether the president was acting with Congress, in Congressional silence, or against Congress. That influential opinion talked about Presidential power being "at its lowest ebb" when the President and Congress were at odds, but *Zivotofsky* shows that there nevertheless remains important areas where Presidential power is unchecked by Congressional approval.

**4. Congress makes the EITC and CTC Permanent.**

The Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC) are two of the most important tax credits available both for low income and, in the case of the CTC, middle class families. As credits, these benefits are both more effective at offsetting taxable income than deductions[2] and the source of one of the largest social tools for both reducing and lifting families out of poverty.[3] Increased benefits and refundability for both of these benefits have been only temporarily extended for several years in the face of contentious battles over the budget on Capital Hill, but this year's significant budget deal finally aims to make these, and many other tax benefits, such as credits for college, teachers, and research and development, along with expansions of charitable deductions, permanent.

**3. Informational Reporting requirements related to Health Insurance coverage kick in.**

In bad news for a group no one feels sorry for, the Affordable Care Act's (ACA) provisions requiring reporting of insurance coverage to the Internal Revenue Service (IRS) kick in this year. While the ACA reporting requirements will be a hassle for businesses and individuals, it promises to wreak havoc on the federal agency charged with administering the tax system. Already in June, the IRS was facing challenges with administering the tax credit system that subsidizes the cost of insurance for low-income individuals.[4] From the outset, the IRS has been concerned about its ability to meet current challenges (its budget has been slashed by $1.2 billion, resulting in an 11% reduction in the workforce), let alone enforcing the 46 new provisions added by the ACA. From an analysis done in April of this year, it appears those concerns were well-placed, with only 40% of people calling for help during tax season getting through, nearly 20% fewer criminal investigations, and a nearly 30% reduction in audits since 2013.

Even if you hate the IRS, I don't think that this issue is a cause to break out the champagne and celebrate. Effective enforcement of the tax system is crucial to maintaining the high compliance rate that keeps our government running, and crippling the IRS will only magnify inefficiencies elsewhere, potentially resulting in even higher deficits, since the government budgets based on what it anticipates collecting, not what it actually receives. Furthermore, if the IRS proves incapable of enforcing the ACA, then individuals may decide it's worth not buying insurance because they're unlikely to get caught and assessed any penalties. This could short-circuit one of the few cost-reducing aspects of the ACA and result in even higher healthcare costs for everyone.

**2. Congress passes the Justice for Victims of Trafficking Act.**

In a rare act of bipartisanship, Congress passed the Justice for Victims of Trafficking Act of 2015 in May. In fact, they passed the bill unanimously through both houses. While not perfect, this law makes several important improvements to the framework for dealing with human trafficking on a national level. Some of these changes include: charging those who purchase services from trafficked persons as sex trafficking offenders, using funds from those charges to establish a victims' fund, funding state grants to develop antitrafficking task forces, and dedicating federal resources to the investigation and combating of trafficking activities. This act is a significant step forward in helping to combat a modern plague that affects hundreds of thousands of people in the United States alone, including thousands of exploited and prostituted children, and it's a rare bit of good news in today's world that Congress could be on largely the same page in terms of addressing this problem.

**1. The Supreme Court hands voters a tool to combat gerrymandering.**

This June, the Supreme Court decided *Arizona State Legislature v. Arizona Independent Redistricting Commission*, a 5-4 decision that upheld the ability of Arizona voters to entrust the drawing of Congressional district lines to an independent commission, rather than whichever political party happens to control state politics. Gerrymandering occurs when the party that wins an election gets to redraw Congressional districts to keep itself in power and is considered one of the contributing factors in the modern political landscape, where around 85% of the seats in the U.S. House of Representatives are considered safe bets for whichever party holds them. While analysts question how much ending gerrymandering will fix this polarization problem, there is general agreement that ending the practice is still worthwhile, and this Supreme Court victory approves the constitutionality of the solution to this problem used in Arizona and several other states. Ultimately, we need further reforms, such as a Ranked Choice Voting, to really start to turn the problem around, but this decision represents a significant victory for electoral reform and clears the way forward for more voter initiatives across the country to address this significant challenge to American democracy.

---

## Footnotes

1. Technically, the definition here is "exempt" versus "nonexempt" (meaning "salaried" and "hourly" respectively. ↩
2. Tax deductions function to reduce Adjusted Gross Income, lowering the tax bracket that someone falls into, while tax credits offset the actual tax bill. This means that a tax deduction of $1000 for someone in the 10% bracket would result in a $100 reduction in that person's tax bill, while a $1000 credit would offset $1000 of tax due, roughly 10x the value. ↩
3. In the 2013 tax year alone, the EITC served to raise 9.4 million families out of poverty, with substantial benefit to another 22.2 million. ↩
4. Basically, both individuals and other government agencies were not turning over the information that the IRS needs to make the system run. This poses a significant challenge to the successful and timely functioning of this somewhat elaborate system in one of its first crucial years. ↩