

Saint Louis University Public Law Review

Volume 30
Number 1 *Voting 45 Years After the Voting
Rights Act (Volume XXX, No. 1)*

Article 4

2010

Foreword

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Recommended Citation

Bardell, Miles D. and Hinkl, Michelle L. (2010) "Foreword," *Saint Louis University Public Law Review*. Vol. 30 : No. 1 , Article 4.

Available at: <https://scholarship.law.slu.edu/plr/vol30/iss1/4>

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FOREWORD

Congress passed the federal Voting Rights Act (“VRA”) in 1965, in reaction to widespread, and often violent, voter discrimination against African Americans in the South. Over the subsequent decades Congress amended the VRA several times. Congress has acted to keep the VRA relevant as covered jurisdictions invent complex strategies to keep discriminatory schemes in place, and to address emerging problems like voter discrimination against language minorities.

As the Supreme Court has become sharply more conservative in the past decade, a storm appears to be brewing on the horizon for the VRA. Recent Supreme Court jurisprudence indicates that the Court could invalidate parts of the VRA as unconstitutional in the not-too-distant future, unless Congress takes action to further streamline the Act. At the same time, voter discrimination continues in all reaches of the Union, often in places we would not think to look. This issue brings together accomplished scholars and legal practitioners from across the continental United States and Puerto Rico to examine the role of the Voting Rights Act 45 years after its enactment.

Christopher Seaman, Visiting Assistant Professor of Law at the Chicago-Kent College of Law, addresses the issue of the constitutional footing of Section 5 of the VRA. Professor Seaman explores the history of the Act, focusing on the preclearance and bailout provisions. After discussing the implications of the recent Supreme Court case *Northwest Austin Municipal Utility District No. 1 v. Holder* and that case’s implications going forward, Professor Seaman proposes a revised bailout system that will keep problem jurisdictions covered while allowing jurisdictions that appear to have moved past voter discrimination to avoid further federal scrutiny of local election decisions.

While some jurisdictions have moved past voter discrimination, as Professor Seaman’s article points out, there is still pervasive voter discrimination in the United States. Jenigh Garrett, Assistant Counsel for the NAACP Legal Defense and Education Fund, examines complex “second-generation” voter discrimination schemes that currently exist in many jurisdictions. Based on a careful review of the congressional record for the 2006 re-authorization of the VRA, Ms. Garrett provides a compelling argument for the continuing need for the VRA.

As further evidence of the continued need for the VRA, the United States Department of Justice (“DOJ”) continues to prosecute suits against

jurisdictions that discriminate in violation of the VRA. The solution the DOJ often proposes in these cases is the creation of Single Member Districts, one or several of which have a demographic composition which allow that district to elect a minority candidate if they so choose. Professor Richard Engstrom, Visiting Research Fellow at the Center for the Study of Race, Ethnicity, and Gender in the Social Sciences, Duke University, delves into two lesser-known election systems, Cumulative Voting (CV) and Limited Voting (LV). Professor Engstrom has written extensively about election systems and has served as an expert witness in numerous cases where CV or LV has been adopted to remedy a discriminatory scheme. Professor Engstrom discusses two recent cases brought by the DOJ under the VRA in which the court adopted a CV and a LV system, and analyzes the successes of the first elections held under the new systems.

Issues concerning voter discrimination are as broad and varied as the populations and cultures of the United States and its territories. Analyzing the issue of language minority discrimination from a completely different point of view is Angel Olivera-Soto, a legal practitioner in Puerto Rico and 2007 L.L.M. graduate of The George Washington University School of Law. Mr. Olivera-Soto provides a look inside the electoral culture of Puerto Rico. He explores the right to vote in the context of people who speak only English in the majority Spanish-speaking Commonwealth. While the right to vote for Spanish monolinguals residing in the continental United States is well established, Mr. Olivera-Soto provides an insightful and interesting analysis in this new setting.

The student comments section of this issue includes several well-researched and carefully written pieces. Jennifer Woulfe provides a thought-provoking Note exploring the junction of United States *forum non conveniens* jurisprudence and Latin American laws that seek to exploit it. She focuses on the already-overcrowded United States judicial system and provides a sound argument for why United States courts should not submit to these foreign statutes.

Michael Kella's Comment on *Arista Records v. Launch Media* is a detailed and skillfully executed work exploring the nexus between electronic distribution of music through online sources and the intellectual property rights of the artists and recording companies who own the music those sources provide. He ultimately suggests alternative analytical methods for future courts that are faced with determining the rights of online music providers, listeners, and intellectual property owners. His Note was awarded first prize for Saint Louis University School of Law in the 2010 Nathan Burkan Memorial Competition, sponsored by the American Society of Composers, Authors and Publishers, and we are proud to publish it here.

Finally, Jessica Scales analyzes the Age Discrimination in Employment Act (ADEA) and relevant case law interpreting that Act. As America's

workforce is rapidly aging and baby boomers near retirement age, her piece is particularly salient. In light of recent case law, she proposes solutions for bringing the mixed motive theory back within the ADEA framework and explains why the mixed motive theory is necessary.

On behalf of the *Saint Louis University Public Law Review*, we would like to express our deep appreciation for each author featured in this issue. Their expert knowledge and unique insights have provided excellent subject matter, while their attention to detail and patience with the editorial process make their work really shine. We also are deeply appreciative of the *Public Law Review* editors and staff, who spent countless hours poring over all aspects of this issue. Professor Matt Bodie, our Faculty advisor, has provided us with valuable input and advice in a variety of situations, while Professor Molly Walker Wilson and Jennifer Beasley did an immense service in their recruitment of the scholars featured in this issue and their organization of the Symposium that was the basis for this scholarship. We are also deeply grateful to Susie Lee and Jessica Flier for their final editing and publication work.

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