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ARTICLES

Movsesian v. Victoria Vericherung and the Scope of the President's Foreign Affairs Power to Preempt Words

Cindy Galway Buys & Grant Gorman 205

*This article addresses the continuing struggle of the federal courts to define the scope of the federal government's foreign affairs power to preempt state law. Recently, the Ninth Circuit Court of Appeals did an about face in *Movsesian v. Victoria Versicherung*, which involved a claim that a California statute using the phrase "Armenian Genocide" is preempted by a few informal nonbinding statements of executive policy made to Congress objecting to the use of those words in Congressional resolutions. In *Movsesian I*, the Ninth Circuit found the California statute preempted in a decision that would have expanded the federal government's foreign affairs power to preempt state law in unprecedented and potentially dangerous ways. Perhaps recognizing in hindsight the possible implications of its decision, the Ninth Circuit then granted rehearing and reversed itself in 2010, now convinced that there is no clear federal policy that preempts the California statute. In neither decision, however, did the Ninth Circuit extensively consider the implications of preempting states from using certain words when legislating. This article uses the *Movsesian* decisions to illustrate the confusion in this area of the law and calls on the Supreme Court to provide greater clarity. It argues that it is bad law and policy for the judiciary to find state law preempted in the absence of a formal legislative act to provide guidance. Doing so effectively requires the judiciary to decide for the executive branch when a foreign policy exists and the substance and scope of that policy. The article ultimately concludes that allowing the federal government to impose a complete ban the use of particular words in state legislation would violate state sovereignty.*

Barking Up the Wrong Tree: Companion Animals, Emotional Damages and the Judiciary's Failure to Keep Pace

Sabrina DeFabritiis 237

What is the value of afternoon walks in the park? Evenings spent relaxing on a living room sofa? A wet face licking and wagging tail every day when you come home? If posed to a pet owner, the answer to these three questions will likely be one word: priceless. Recovery at law for the death or injury to a pet, however, not only has a price, but that price is measured solely by the pet's market value. The role companion animals serve in the American household has evolved: Once property used to derive an economic benefit; pets are now

family members sharing a unique emotional bond with their human companions. Yet, the judiciary has failed to keep pace with society's changing attitudes. As a result, there is inconsistent precedent on the ability of the pet owner to recover for emotional damages following the injury or death of a companion animal. The courts are looking to the legislature to recognize this right of recovery. It is time for the legislatures to act by following and improving existing legislation and statutorily permit recovery of non-economic damages for the wrongful injury to or death of companion animals.

Cost and Punishment: Reassessing Incarceration Costs and the Value of College-in-Prison Programs

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This article is the first study examining college-in-prison programs as part of the cost-reducing and risk-management trends currently dominant in criminal justice systems. The article concedes that a college programs will not be of benefit to every inmate and may confer benefits on politically unpopular constituencies, but argues that such educational offerings are nevertheless a powerful tool for reducing recidivism and incarceration costs.

Extracting Lessons from Illinois' 2010 Special Election Fiasco: A Closer Look at the Seventh Circuit's Decision in *Judge v. Quinn* and the Special Election Requirement of the Seventeenth Amendment

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*This Note discusses the recent Seventh Circuit decision in *Judge v. Quinn*, in which the Seventh Circuit unanimously set aside Illinois' Election Code under the Seventeenth Amendment because of the manner in which they filled vacant seats for U.S. Senator. This issue arose when then-Senator Barack Obama resigned from the Senate in November, 2008, to become President. When he resigned, Roland Burris was appointed to fill the seat. Illinois was not planning to hold a special election to fill Obama's seat because under Illinois Election Code, a special election to fill a vacant senate seat could only occur with the next general election. In this case, that would be in November, 2010—Obama's sixth year of the senate term. Even if Illinois had conducted a special election in November, 2010, the winner would not be determined until late November and would not actually be sworn into office until early December. Thus, any elected replacement for Obama would only serve about a month in office (i.e. until January 3rd, which a new Congressional Session began). Illinois was therefore planning to allow the temporary appointee, Roland Burris, finish Obama's senate term. However, the Seventh Circuit unanimously set aside Illinois' Election Code and held that the Seventeenth Amendment required a special election, even where a replacement would only serve one month in office. Therefore, in the final three months before the November 2010 general elections, Illinois scrambled to include a special election to fill the remainder of Obama's senate term. *Judge v. Quinn* is of critical importance because approximately forty states have election codes similar in effect to the statute that was unanimously set aside by the Seventh Circuit. This scenario is also not uncommon; for example, in the time period between 2002 and 2008, this situation occurred in at least four other states—Florida, Colorado, New Jersey, and Alaska. Since this issue had never been addressed before, *Judge v. Quinn* is*

positioned to be the vanguard of special election reform. Voters in other states will likely challenge their state's election code under the holding of Judge v. Quinn, especially in light of the solidarity of the all of the Judges on the Seventh Circuit and the strong language they employed in their opinion. This Note assesses the soundness of the Seventh Circuit's opinion and provides the necessary considerations states should incorporate in their analysis to update their own senate special election statutes.

COMMENTS

Drivers License Suspension for Offenses Not Involving a Motor Vehicle in Illinois: An Irrational Application of the Rational Basis Test

Colby Hathaway 355

The focus of this Comment is to look at how the court system in Illinois has treated substantive due process challenges to state statutes that require revocation or suspension of a driver's license when no motor vehicle was involved in the offense. The Supreme Court of Illinois has heard several cases on this issue, and the results have been inconsistent. The Court first held that license revocation for those charged with delivery of a controlled substance was unconstitutional, and then later held that license suspension for consumption of alcohol by a minor was constitutional. This inconsistency has also given rise to proportionate penalty and double jeopardy issues with those minors who have had their licenses suspended after being convicted of alcohol related offenses not involving motor vehicles. While license suspension or revocation for offenses not involving a motor vehicle may be constitutional under certain circumstances, this Comment advocates for the courts in Illinois to apply a more consistent application of due process review to these statutes.

Watching the Watchmen: The People's Attempt to Hold On-Duty Law Enforcement Officers Accountable for Misconduct and the Illinois Law that Stands in Their Way

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In the days when police brutality and public official corruption pump through the veins of society as a fermenting virus, a critical analysis of a controversial law curtailing efforts to intensify public awareness of government official transgressions is undertaken. In the great State of Illinois, legislative amendments to the Illinois Eavesdropping Act have established a moratorium on the audio recording, without prior consent, of any judge, state's attorney or law enforcement officer while in the performance of his or her official duties, regardless of whether or not the public official(s) had any objective, justifiable or reasonable expectation of privacy when the speech at issue was uttered. In short, the Act makes it a criminal offense (Class 1 felony) to audio record the spoken dialogue of on-duty government officials without prior consent, not just in private settings, but anywhere, at any time, and under most any circumstance, even in public streets and walk ways. The central issue that must be answered is whether or not private citizens have a constitutionally protected First Amendment right to gather, record and disseminate the publically uttered, non-private speech of on-duty government

officials. A comprehensive examination of all of the current case law on point, federal and state, has answered that question unequivocally in the affirmative. In its existing capacity, the Illinois Eavesdropping Act's overbroad applicability, coupled with police exemptions allowing officers to record conversations with private citizens without their prior consent, elicits brazen viewpoint speaker discrimination with respect to the well-established constitutionally protected First Amendment right to express and/or disseminate the audio documentation of public, non-private, conversations. In addition, Fourth Amendment jurisprudence starkly reveals that one cannot claim, even if statutorily permitted, Fourth Amendment privacy protection in order to squash attempts to publicize audible utterances and conduct captured with electronic recording devices in public, non-private settings. Finally, when analyzing the issue from a public policy perspective, the Act's unjustifiably overbroad construction is brought to light in even further detail with the exposé of alarming statistics and studies illustrating the pervasiveness of law enforcement abuses of citizens and other general public official corruption. When, in a free society, the people are imprisoned for pursuing government official accountability by openly audio recording the publically spoken words of those government officials, is that society which purports to be free any longer truly so? Watching the Watchmen may provide some answers.

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