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ARTICLES

Congressional Enforcement of Affirmative Democracy Through Section 2 of the Voting Rights Act

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One might instinctively think, as suggested by several commentators, that section 2 of the Voting Rights Act, a race-based remedy imposed by Congress on state and local governments, has a good chance of being declared unconstitutional by the Supreme Court. This is because, in recent years, the Court has shown a general hostility to race-based remedies and to laws that impose federal requirements on state and local governments. The author, however, identifies three core values to demonstrate that section 2 remains clearly constitutional even in light of these trends. The first is that racial discrimination in voting is a context in which the Court will allow Congress greater leeway to impose race-based requirements on state and local governments; the second is that section 2 comes pretty close to conforming to the Court's view of what amounts to a proper use of a race-based remedy; and the third is that section 2 does not amount to a much greater intrusion on state and local governments than the Constitution itself.

The Inevitable Reevaluation of *Best v. Taylor* in Light of Illinois' Health Care Crisis

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In the 1997 Illinois Supreme Court decision of Best v. Taylor Machine Works, *the court held that caps on non-compensatory damages violated the Illinois Constitution. However, in light of the current health care insurance crisis, the court may have to reconsider this issue. This article re-crafts the decision, ultimately arguing that caps are constitutional. The intention of the article is three-fold. First, the article attempts to bring greater attention to a growing problem that requires immediate addressing, while advocating a direct and administratively simple solution. Second, the article seeks to provide a historical overview of caps on non-compensatory damages relating to personal injury and specifically, medical malpractice. Finally, the article provides the court with a legal framework for re-writing its decision to support a cap on pain and suffering damages in medical malpractice cause of actions. Part I of this article adumbrates the current state of the medical malpractice insurance crisis in Illinois and reasons why the cap is the most effective*

solution to control rising malpractice premiums, encouraging medical providers to practice in Illinois. Part I also focuses on the history of non-compensatory caps in Illinois, providing some insight into the 1976 decision of Wright v. Central Du Page Hospital Association, *and detailing the facts of* Best v. Taylor. *Part II focuses on the court's reasoning in* Best v. Taylor *and sets forth a compelling argument for reversal. It not only addresses the court's arguments pertaining to the special legislation clause and the separation of powers clause, but it rebuts other arguments put forward by opponents of caps, pertaining to the right to a jury, equal protection, due process, and the right to a certain remedy under the Illinois Constitution. Part III concludes that the Illinois Supreme Court decision of* Best v. Taylor *was poorly reasoned and should be overturned, given that a cap on non-compensatory damages in medical malpractice actions can be supported by Illinois law and policy.*

Constructing Reality: Social Science and Race Cases

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Constructing Reality: Social Science and Race Cases *was the keynote address for the 2004 Northern Illinois University Law Review Symposium on the future of affirmative action after the Michigan affirmative action case known as* Grutter v. Bollinger. *The essay looks at the use of social science in the amicus briefs before the Supreme Court in that case. The author points out that social sciences were used in almost all the amicus briefs to either attack or defend affirmative action. This insight leads the author to argue that, because judges bring their understandings of the world into their decision making, lawyers for social justice must understand how to shape public opinion outside the courtroom. A perspective that first appears in a brief will not influence a judge whose world view is not already open to the information presented. Accordingly, lawyers for social justice must understand collective memory and how it is shaped as much as any other social science technique if they are to construct the arguments that change history to the extent that they are deserving of a law review symposium.*

COMMENTS

Have Kids, Might Travel: The Need for a New Roadmap in Illinois Relocation Cases

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The issue of child custody relocation continues to be a source of controversy and contention nationwide, as state legislatures and courts have struggled to determine the difficult question of whether, and under what circumstances, a child's residential parent may be permitted to relocate with the child across state lines. In Illinois, the issue of relocation has proven particularly troublesome, as there are no statutory standards to guide courts in determining when removal is in the best interests of the child and appellate decisions have yielded inconsistent and often puzzling results. This article addresses the issue of custody relocation in Illinois. After briefly examining the various approaches to relocation from a national perspective, the author provides an in-depth history of Illinois relocation law, with particular focus on the seminal cases of In re Marriage of Eckert, *and* In re Marriage of Collingbourne. *The author then argues that Illinois courts have employed an analysis in relocation cases that is inconsistent with determining the best interests of the child and the underlying policies of the Illinois Marriage and Dissolution of Marriage Act. The au-*

thor concludes by calling for the amendment of the Illinois relocation statute, suggesting statutory best interest guidelines and other provisions that could lead to more desirable and consistent decisions in Illinois removal cases.

Due Process and the NCAA: Are Innocent Student-Athletes Afforded Adequate Protection from Improper Sanctions? A Call for Change in the NCAA Enforcement Procedures

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This note discusses the National Collegiate Athletic Association's (NCAA) current penalty enforcement procedures and whether student-athletes are afforded adequate protection from penalties for violations not committed by them. It examines the line of cases discussing whether the NCAA is a state actor when imposing sanctions upon member institutions. The 1988 United States Supreme Court case of NCAA v. Tarkanian *held the NCAA not to be a state actor when sanctioning member institutions, thus depriving coaches and student-athletes of the opportunity for court redress for a possible liberty or property deprivation. Specifically, this note asserts that with respect to the 2003 sanctions imposed upon the University of Michigan men's basketball team, the NCAA was a state actor because of the cooperation and joint participation between the Michigan and the NCAA. This note concludes that innocent student-athletes are being unfairly sanctioned for penalties not committed by them and proposes internal changes to the current NCAA sanctioning process to ensure more protection for innocent student-athletes.*