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C O N T E N T S

ARTICLES

A History of Elector Discretion – Part Two

Michael L. Rosin 1

In its opinion in Chiafalo v. Washington, the Supreme Court disposes of the actual history of elector discretion as too inconsequential to merit its serious analysis. A history of elector discretion not only includes a history of the electors who exercised discretion when casting electoral votes, it also includes a history of commentary on the role of electors as the Constitution was created and, more importantly, as Congress was attempting to amend it. The Court almost completely ignores this history. When Congress crafted the Twelfth Amendment in 1803 it recognized that “the right of choice [of president] [...] devolve[s] upon” the House of Representatives from the Electoral College. Section 4 of the Twentieth Amendment twice repeats this text. As the House Committee reporting the Twentieth Amendment reported it to the full House in 1932 it acknowledged that electors are free to exercise discretion. Earlier versions of this Article served as the primary input to amicus briefs filed in the author’s name in Chiafalo. This Article reviews the relevant episodes of congressional history as well as election history to demonstrate that Congress has never understood the Constitution to allow electors to be bound with legal consequences.

Stepping Towards Justice: The Case for the Illinois Constitution Requiring More Protection than Not Falling Below “Cruel and Unusual” Punishment

Andrea D. Lyon and Hannah J. Brooks 47

In these tumultuous times, when our nation is trying to not only navigate a global pandemic, but also actually reckon with its long history of institutional racism, mass incarceration, and devastation of poor communities and communities of color, the cry for criminal justice reform is loud and getting louder, particularly regarding sentencing, and it is time for Illinois to require its courts to commit to doing more in accordance with our constitution. In this article, the authors examine the legislative and constitutional history of Illinois, the effects of a series of recent decisions made in the context of the sentencing of juveniles, and the applicability of family law norms to sentencing decisions. It is time for Illinois courts to permanently commit to doing more, to follow the dictates of its own constitution and, in sentencing, take seriously its directive of acting with the goal of returning an offender to useful citizenship. Illinois courts should now seek to uphold the promise of our Illinois Constitution regarding sentencing: “All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. No conviction shall work corruption of blood or forfeiture of estate. No person shall be transported out of the State for an offense committed within the

State.” The authors argue that Illinois courts should have to make findings of how their sentences comport with the Illinois Constitution and advocate for those representing the accused to ask for those findings and to present evidence in support of sentences which have the goal of returning an offender to useful citizenship.

Sanctuary Cities and Counties for the Unborn: The Use of Resolution and Ordinances to Restrict Abortion Access

Jennifer L. Brinkley63

Santa Rosa County in Florida is the first county in Florida to be designated as a pro-life sanctuary. Florida joins other states--including Illinois, New Mexico, Texas, North Carolina, and Utah--in passing resolutions and ordinances declaring localities as sanctuaries for the unborn. Some localities declare life begins at conception, ban abortion services (including access to emergency contraception), classify abortion as murder with malice aforethought, label pro-choice organizations as criminal enterprises, and create civil causes of action against abortion providers and those who assist women in obtaining an abortion. Most of the localities that have enacted the ordinances and resolutions have small populations and do not have abortion clinics. This article examines the sanctuary movement at the local level across the United States. It discusses the intersection of romantic paternalism with reproductive jurisprudence, the emergence and proliferation of TRAP laws, and the resolutions and ordinances making up the sanctuary movement.

COMMENT

From Video Gaming to Underage Gambling: Illinois’s Options in Addressing the New Loot Box Monetization Model

Katlin Kiefer96

This Comment proposes that loot boxes should be regulated as gambling within the United States, particularly in Illinois. Part I provides a factual background and history on the practice of loot boxes. Part II sets forth the legal precedent of gambling in the United States overall and then in Illinois specifically. Part III covers the current case law that exists around loot box adjacent mechanics and summarizes the general court perspective on the matter. Part IV proposes that courts interpret the contents of loot boxes to be “things of value” within the meaning of most gambling statutes as a means of regulation on the practice. Part V explains why the regulation of loot boxes is necessary as children especially are susceptible of developing a gambling addiction via their use and also establishes some options for how Illinois could combat such predatory tactics.

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