

Daniel McCool, ed. *The Most Fundamental Right: Contrasting Perspectives on the Voting Rights Act*. Bloomington: Indiana University Press, 2012. 360 pp. (\$85.00 cloth, \$35.00 paper).

Each passing decade of redistricting ushers in a new episode in the ever unfolding drama of voting rights litigation. Interest groups, lawyers, and political parties quite reliably land in a novel controversy that beckons the courts to iron out some new doctrinal wrinkle in this area. As of late, Texas and North Carolina are currently vying for the record as the most frequently sued state in this regard.

So, too, do the changing times invite new thinking by the experts and scholars who work in this area. Thankfully, this regular cycle also includes the development and production of new research that provides scholars, policymakers, and litigants with a framework to approach some of the thorniest of issues. These contributions have led to concrete proposals that inform and advance the legal doctrine in some meaningful ways. More often than not, these works also enhance our view of the impact of voting rights policy and examine the primary legal issues that remain unconsidered.

The agenda-setting style of work in the scholarly literature is reflected in writings like *Controversies in Minority Voting* (Grofman and Davidson 1992) and *Quiet Revolution in the South* (Davidson and Grofman 1994). Both of these edited volumes provide a comprehensive framework for a scholarly conversation about the defining issues for the decade. These works brought a group of experts who turned their focus on explaining the work that the Voting Rights Act has accomplished and to developing their best insights about how the law might evolve to address new problems. The impact of their collective effort endures today, even as the U.S. Supreme Court is now addressing the very constitutionality of Section 5 of the VRA.

Entering into this body of foundational research is *The Most Fundamental Right*, which aims to set the standard for the voting rights discourse following the 2010 census. The publication could not arrive too soon. Already, this decade in voting rights has been marked by a deceptively narrow set of questions concerning the state of race relations, the role of states in modern governance, and the emerging complexities of diversity in politics. Texas now appears poised to retake the lead as the nation's pre-eminent voting rights defendant with not less than three different actions pending in some part of the judicial system. And with the pending existential question about the continued viability of Section 5 of the Voting Rights Act, the need for a thoughtful, reasoned conversation that relies on ideas as opposed to ideology is most pressing.

In many respects, parts of *The Most Fundamental Right* handily meet this challenge. The book organizes its essays into three parts—(1) the context and history of the VRA, (2) the current debate about the policy, and (3) broader commentary. Particularly in the opening section, the writers lay some groundwork and then address problems that have regularly confused the Courts and policymakers.

For example, Peyton McCrary reviews the manner in which Section 5 (the heart of the Voting Rights Act) has been applied during the life of the statute. What is most noteworthy from this essay is how much this administrative system has transformed over time. Due to changing political circumstances and reinterpretations of standards by the Court and by Congress, states and local jurisdictions face the problem of complying with a law whose terms are often shifting. This point bears special meaning given the course of present litigation this decade, following congressional reauthorization of Section 5 in 2006. Inasmuch as *Shelby County v. Holder*, as of this writing currently pending in the Supreme Court, tests the viability of the preclearance provision, the essay offers a useful account from a historical perspective.

Richard Engstrom's entry on influence districts takes on vexing legal and conceptual question that Congress and the judiciary have done their part to render indecipherable to date—how voting rights law should treat election districts that are less than 50% non-white. Traditional remedies have relied upon majority non-white districts, reasoning that non-white voters could be assured a chance to elect a candidate they preferred in this setting. But since then, the landscape that is nicely described in *Quiet Revolution* and *Controversies* has changed such that some areas now have well-functioning election districts where no one group forms a majority and others where whites who are in a majority cooperate with non-whites regularly (sometimes electing a non-white candidate). Should either of these districts factor into the analyses of vote dilution (relevant to Section 2) or of retrogression (Section 5's concern)?

One slight criticism of the work overall relates to the “fit” of its different sections, particularly covering the debates. Judged by the book's apparent aspiration to have a national scope, the pair of views dueling about voting rights in South Dakota is not the most obvious case to study. The South Dakota essays certainly provide a fine analysis of the kinds of problems facing Native Americans in preclearance counties. But these very significant experiences are more specific to their location and are not necessarily comparable to the ones affecting non-white voters in the rest of the country. More, or perhaps different, cases might have satisfied this concern. While its two predecessor volumes take a geographically broad sweep to draw generally applicable insights, *The Most Fundamental Right* narrows its focus. The competing viewpoints about language assistance in Section 203 of the Act provide some expansive elements to this section, but the South Dakota experience does not strike a reader as the neatest of fits.

Examining the road ahead, the final section of *The Most Fundamental Right* offers new ideas for scholars and policymakers for reform. Chief among them is an invitation to reconsider the role partisanship should play in redistricting decisions. What most students of voting rights understand, though what few can completely theorize, is how race and party relate to each other. Presently, the constitutional doctrine on gerrymandering heavily regulates how race can enter decisions like drawing districts. Yet it shows

far less concern about constraining partisanship, including some cases where party loyalty can lead to dilutive effects on non-white communities. Again, had less space been assigned to the debates section, a more complete treatment might take up Justice Kennedy's invitation to construct a standard to address partisan gerrymandering. If there is a judicial role to play, one must articulate a standard to guide the inquiry.

Overall, *The Most Fundamental Right* is a very promising addition to the catalogue of work that explores the current voting rights landscape. Not only does it provide helpful updates to the known background on the Voting Rights Act, but it also outlines some very important issues that are sure to be the center of this decade's forthcoming legal and policy problems.

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