

The Voting Rights Act at 45: History and Present Reality

By Benjamin E. Griffith

Just what is the right to vote? That question was parsed and dissected in a panel presentation at the ABA Young Lawyers Division's Fall Conference in Birmingham, Alabama, that focused on the Voting Rights Act from its initial enactment in 1965 to the present. This article reflects the spirit and thrust of that timely program.

According to civil rights pioneer J. Mason Davis Jr., it is vitally important for today's young lawyers to be reminded of the sacrifices and crushing disenfranchisement experienced by black citizens following post-Civil War reconstruction and continuing through the first half of the twentieth century. Our nation has a sordid history of gerrymandering of election districts, marginalization of black voting strength, and reestablishment of white political supremacy by southern legislatures, a process that reached a crescendo during the 1890s and extended well into the next century.

Through the words and firsthand accounts of such stalwarts as Mason Davis, young lawyers can feel the impact of massive, entrenched resistance to black political participation. The seeds of the civil rights movement were indeed planted in the decades following the Civil War as more and more creative means of denying minorities electoral access were devised and implemented. These included poll taxes, literacy tests, white primaries, vouchers of good character, disqualification for crimes of moral turpitude, and an array of "color-blind"

laws, procedures, and practices that were designed to exclude blacks from electoral access and meaningful participation in the political process.

During the years that followed the end of World War II, Congress and the courts undertook many efforts to attack this entrenched official and societal discrimination through the



vehicle of voting-related legislation passed in 1957, 1960, and 1964.

The reapportionment revolution was triggered by such landmark decisions as *Baker v. Carr* (1962), in which the U.S. Supreme Court embraced the doctrine of vote dilution from malapportionment, and *Reynolds v. Sims* (1964), in which the Court established the one person, one vote principle. These

were key steps that led to the first generation of voting rights litigation to redress the unconstitutional dilution of the voting strength of racial minorities.

What followed in rapid succession was enactment of the federal Voting Rights Act of 1965, the "Crown Jewel" of the civil rights movement, and a series of landmark judicial decisions that propelled the development of a coherent body of case law as vote dilution, redistricting, and reapportionment litigation evolved during the decades following the decennial censuses of 1970, 1980, 1990, and 2000.

Congress exercised its authority under the Fifteenth Amendment in an inventive manner when it enacted the Voting Rights Act of 1965 as the VRA prescribed remedies for voting discrimination that went into effect without any need for prior adjudication. Further, Congress found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting because of

the inordinate amount of time and energy required to overcome the obstructionist tactics encountered in these lawsuits.

As one of the key weapons in the federal government's voting rights enforcement arsenal, the Section 5 preclearance requirement, under which certain "covered jurisdictions" with a history of voting discrimination must first seek approval of election-related changes from the federal Department of Justice or obtain a favorable declaratory judgment from the U.S. District Court for the District of Columbia before implementing those changes, was initially enacted in 1965 as a temporary emergency measure that was deemed essential to compel compliance with the Voting Rights Act's guarantee of equal access and participation in the political process by racial minorities.

The legislative history that led to enactment of the federal Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (VRARA) sufficiently demonstrated a continuing need for the VRA's key provisions, including Section 5 preclearance and Section 203 language minority assistance, although there were strong elements of resistance among a vocal minority that perceived enough progress had been made on the racial front to dispense with these legislative enactments. The VRARA included another twenty-five-year extension of the VRA's temporary provisions.

Included in the VRA's temporary provisions were Section 5 and its related bailout provision under which covered jurisdictions could seek an exemption from Section 5 coverage. At the time the Voting Rights Act's provisions were up for renewal in 2006, only seventeen of the approxi-

mately 12,000 covered jurisdictions had successfully applied for and obtained bailout.

In 2009, the Supreme Court greatly expanded the availability of Section 5 bailout in *NAMUDNO v. Holder*. By the time the Court handed down its decision, it was apparent to many that the political reality of 1965 now stood in sharp contrast to the political reality that prevailed when the VRARA was enacted in 2006. The evil that Section 5 was intended to address no longer appeared to be concentrated in those covered jurisdictions that had been singled out for preclearance. The racial gap in voter turnout and registration was lower in jurisdictions covered under Section 5 than it was nationwide. *NAMUDNO* not only dealt with Section 5 bailout but was primarily a frontal attack upon the continued need for and constitutionality of this key provision of the Voting Rights Act.

As Chief Justice Roberts noted in his majority opinion in *NAMUDNO*, which was joined by seven other justices, the issue of Section 5's constitutionality did not have to be addressed and was pretermitted under the doctrine of constitutional avoidance. The fact remained, however, that eight justices were now on record as agreeing that the VRARA of 2006 must be justified by current needs to the extent that it imposed current burdens, the registration gap between black and white voters was in the "single digits" in covered jurisdictions, and in some of those jurisdictions blacks now register and vote at higher rates than whites.

The United States has turned the corner over the past four decades since the Voting Rights Act of 1965 was signed into law by President Lyndon B. Johnson. The VRA as originally enacted was

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Big Tax Refunds Aren't Worth the Instant Gratification

By Gretchen L. Springer

It's that time of year when many lawyers start to get excited about that big tax refund for which they've been waiting. Visions of HDTVs, new suits, and vacations start dancing through their heads. What they often don't realize is that receiving that huge refund is really a poor financial strategy.

If you opt to have taxes overwithheld from your paycheck so you'll receive a big refund at the end of the year, not only are you making an interest-free loan to Uncle Sam but you're missing out on an opportunity to make that money work for you throughout the year and beyond.

Consider 2009. By overpaying on your income taxes all year long, you missed investing that money where the stock market recovered. If you overpaid taxes, you'll receive a refund that earned you 0 percent. If you had adjusted your 2009 withholding on your W-4 to have your tax payments match your tax liability, you could have invested that money in U.S. large cap stock index funds and earned over 20 percent.

Additionally, when you have too much money withheld from your paycheck, you run the risk of increasing use of credit cards or other debt. Too many times tax refunds are used to pay down debts that could have been avoided, at least in part, if not for the overwithholding. So while it's too late for 2009, you can still adjust your tax withholding for 2010. Here's how:

- ✓ **Project your income.** This is easy to do if you are a salaried employee. Consider raises and bonuses that you expect to receive.
- ✓ **Project your taxes.** Using your projected income, figure out your annual taxes for 2010. Consider life events (e.g., marriage, divorce, a new baby, or starting a new



job) that can affect your tax liability. Hire an accountant if needed, and complete a state income tax projection.

- ✓ **Project taxes per paycheck.** Divide your projected taxes by the number of annual paychecks you'll receive. If you are paid twice a month, divide by 24. If you are paid every two weeks, divide by 26. This is the amount of money you should withhold for taxes every paycheck.
- ✓ **Resubmit your W-4.** This form determines how much money you withhold for federal and state taxes each paycheck. Ask your human resources department how many allowances that you should claim on the W-4 to equal the amount of money that you figured you need to withhold per paycheck.

Remember that an allowance does not equal a person or your total dependants. It is simply a number that determines the amount of tax your employer with-

holds from your paycheck throughout the year. The higher the number of allowances, the less tax that is withheld each paycheck. The ideal way to end each year is to receive the smallest refund.

Once you have adjusted your withholding, it's time to make some smart choices about how to use the extra money in your paychecks each month.

- ✓ **Boost your emergency funds.** If you've been using tax overwithholding as a forced way to save, set up an automatic-deposit system with your bank or employer instead. Transfer those funds directly into savings rather than sending them to Uncle Sam. This can curb your habit of overusing credit cards.
- ✓ **Fund savings to spend.** Better plan for events that you know will cost you money every year. Escrow \$50 each month for the \$600 you always spend on during the holidays. Set aside money each paycheck for the vacation you take every February or the law convention you

attend every fall.

- ✓ **Eliminate debt.** Instead of using your tax refund to pay down your credit card balance every year, use the extra money in your budget each month to cover expenses and not accumulate credit card debt and interest in the first place. You also can make extra payments on your debts to pay them off sooner.
- ✓ **Start investing.** Resetting your income tax withholding is a great time to also begin investing for your future. If you are already saving, increase the amount you are putting into your Roth IRA or 401(k) pension plans.

By adjusting your tax withholding for 2010 and investing your 2009 tax refund instead of spending it, you will put yourself on the track to financial success in 2010 and beyond.

Gretchen L. Springer is a financial advisor with North Star Resource Group near Madison, Wisconsin, and is a registered representative and an investment advisor representative with Securian Financial Services, Inc., and CRI Securities, LLC, registered investment advisors, members FINRA/SIPC. She can be contacted at gretchen.springer@northstarfinancial.com.

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Voting Rights Act

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grounded on a clear and firm—and factually supported—intent by Congress to rid this nation of racial discrimination in voting. Due largely to aggressive enforcement of the VRA's key provisions, including Section 5 preclearance in covered jurisdictions and Section 2 vote dilution actions nationwide, progress in race relations has resulted from an increasingly accessible electoral process. Subsequent revisions and extensions of the VRA in 1970, 1975, 1982, and 2006 have enhanced that progress. It remains a vital component of our nation's guarantee that minority voting rights will not be diluted, marginalized, or denied. Even to the most pessimistic observers of the modern American electoral process, the glass of equal political access and electoral opportunity is now largely perceived as more than half full. Indeed, it is arguably filled to the brim. We are a better nation for it.

Visit www.abanet.org/yld/tyl/apr10 for an extended version of this article.

Ben Griffith is a member of the ABA House of Delegates, past-Chair of the ABA Section of State & Local Government Law, editor and chapter author of *America Votes! A Guide to Modern Election Law and Voting Rights* (2008 and Supp. 2009), member of the ABA Advisory Commission to the Standing Committee on Election Law, World Jurist Association's National President for the United States, and past president of the National Association of County Civil Attorneys. He is a partner in the Cleveland, Mississippi, firm of Griffith & Griffith and can be contacted at bgriff@griffithlaw.net.

NEXT STEPS

- *America Votes! A Guide to Modern Election Law and Voting Rights*. 2008. PC # 5330200. Section of Administrative Law and Regulatory Practice, Government and Public Sector Lawyers Division, Section of Individual Rights and Responsibilities, and Section of State and Local Government Law. Order at www.ababooks.org.



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Your Wi-Fi Adventure

By Benjamin D. Kern

You're leaving the office early for a relaxing holiday weekend at a remote cabin. You finish your document, compose an e-mail, and click "Send." You grab your laptop, jump in the car, and off you go to your destination. Hours later, your BlackBerry® buzzes with a message explaining that your client has had a change of heart on a few minor points.

The changes should take only fifteen minutes, but you can't use your BlackBerry. Half an hour ago, you passed an exit with signs for Starbucks® and McDonalds®. Now, you only see wineries, a pizza place, and a gas station. In this situation, do you:

- (A) Tell your client that you'll need a few hours, and drive back to the office;
- (B) Use a broadband card to

connect to your office, make the changes, and continue merrily on your way;

- (C) Turn around, drive back to the Starbucks or McDonalds, and use their commercial Wi-Fi connection; or

- (D) Search the pizza place, gas station, and nearby homes or businesses for an open Wi-Fi connection that you can use?

If you answered (A), you should be proud of your old-school sensibilities and commitment to client service.

Those who chose (B) may be frequent travelers or lawyers with generous technology budgets.

- Wireless carriers commonly offer dedicated data cards for laptops (or phones that can be connected to laptops) with decent connection speeds. Mobile broadband solutions,

including Wi-Max networks, offer a subscription-based alternative to Wi-Fi.

- Mobile broadband also can be used in conjunction with Wi-Fi. Portable hotspots like the MiFi device now offered by several carriers allow serious travelers to use a pocket-sized, group-friendly Wi-Fi hotspot anywhere that mobile data services are available.

(C) is the right choice for risk-averse drinkers of expensive coffee.

- Many restaurants, coffee shops, and hotels offer free or pay-per-use Wi-Fi to customers. Buy your coffee, point your mouse to the icon on your screen that says, "wireless networks are available," open your browser,

- Check with your firm's IT staff before you use any remote method of accessing your work network. Many firms use end-to-end encryption, such as Virtual Private Network (VPN) connections or encrypted Citrix platform. Don't use open

Wi-Fi to transmit sensitive data unless your IT group has implemented proper security. Also, be sure to buy a cup of coffee if Wi-Fi is for patrons only. If you chose (D), some would call you a Wi-Fi bandito.

- Although many companies and people secure their networks for private use only, it is still fairly common to find networks that are open for public access.

- You can find these networks by scanning around with your laptop open, or you may be able to use a Wi-Fi-enabled phone to help you scan. If you like gadgets, you also can use devices like those offered by Canary Wireless to help find open networks.

- Look at the network ID of the open networks for names that suggest they are associated with a civic group, park or library, a community networking group like NYCWireless, or others that share their bandwidth.

- Watch for traps. In airports, for example, it's common to find network names like "Free

Internet." Check your computer's description of the network carefully before connecting. If the network is an ad-hoc or computer-to-computer network (represented in Microsoft Windows® Vista or 7 by an icon showing several computers in a group), the connection may be a scam that is designed to steal passwords and other private information.

Lawyers have many options when an Internet connection is needed on the road. As long as you choose a network carefully and ensure that your laptop and office network support end-to-end encryption or other security measures, a Wi-Fi adventure may save your next vacation.

See "Whacking, Joyriding and War-Driving: Roaming Use of Wi-Fi and the Law" (www.abanet.org/buslaw/committees/CL320010pub/newsletter/0009/) for more from this author on the use of Wi-Fi.

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APR. 22, 2010	 FUNDAMENTALS OF TAX-EXEMPT HEALTHCARE
APR. 29-30, 2010	WOMEN IN LAW LEADERSHIP (WILL) ACADEMY 2010 PHILADELPHIA, PA
MAY 4, 2010	 ANATOMY OF BUSINESS LAW: TAX TIPS FOR AN ACQUISITION
MAY 6, 2010	 HIPAA FUNDAMENTALS
MAY 13-15, 2010	ABA YOUNG LAWYERS DIVISION SPRING CONFERENCE WYNDHAM SUGAR BAY RESORT AND SPA ST. THOMAS, USVI Jointly with the ABA General Practice, Solo & Small Firm Division, and the Virgin Islands Bar Association Seize this opportunity to connect, collaborate, and learn at one low price. With over fifteen events to choose from the conference offers a relaxed yet business-oriented environment where you can step back from your day-to-day routine to: <ul style="list-style-type: none">• Build your network with connections that will last a lifetime• Share ideas and discuss important issues with your peers• Learn from the experts and hear about the latest trends and developments Register by April 14 to take advantage of the discounted registration rate of \$85 for members and \$95 for nonmembers. For more information and to register, visit www.abanet.org/yld/spring10 .

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Justin Heather Receives 2009 National Outstanding Young Lawyer Award

By M. Vittoria "Giugi" Carminati

He is a smart, hard working, and dedicated young lawyer who takes the time to defend those who cannot defend themselves. He teaches law students, mentors young lawyers, and serves the national and local bar. Too much, you say? Well, not for the 2009 ABA YLD National Outstanding Young Lawyer Justin Heather.

Heather, a litigation associate with the Chicago office of Skadden, Arps, Slate, Meagher & Flom LLP, defies stereotypes and goes above and beyond his extremely demanding practice to improve the lives of others and the bar.

Pro bono dedication

Heather has logged more than



Justin Heather

4,000 pro bono hours since he began practicing law eight years ago. He currently represents a client on death row, in a case referred by the ABA Death Penalty Project, at the Mississippi State Penitentiary in federal

habeas corpus proceedings. He also serves as counsel to an inmate in Section 1983 litigation against prison officials arising out of an incident that caused traumatic injury to the inmate.

Heather, along with David Wolfe and Scott Henry, began a pilot program in 2009 for low-income senior citizens in Chicago that the ABA YLD will implement on a national basis during the 2010–2011 bar year. Through that program, "Serving Our Seniors," volunteer attorneys provide basic legal help to seniors by drafting wills and advanced healthcare directives.

Bar contributions

In addition to his pro bono work, Heather serves as a vice-chair for the Chicago Bar Association's Young Lawyers Section and serves on the board of the *CBA Record* and the Young Professionals Board of the Chicago Bar Foundation and the Legal Assistance Foundation of Metropolitan Chicago. He also is

a council member of the Illinois State Bar Association Young Lawyers Division.

Among his achievements, Heather has published legal articles and received several awards for his legal writing. He is an assistant editor for ABA YLD's *The Affiliate* and works as the editor of a book on behalf of the ABA Section of Litigation that is designed to provide women and people of color with insights to help them advance in the legal profession. In an effort to help other lawyers, Heather serves as a mentor to law students and an informal mentor and confidant for junior lawyers at Skadden.

Recognition

Heather's achievements have not gone unnoticed. He is the recipient of several awards for his contributions to the legal profession, the organized bar, and the public. He received the 2008 Young Lawyer of the Year Award (Cook County) from the Illinois State Bar Association

Young Lawyers Division and was the 2007 recipient of The Maurice Weigle Exceptional Young Lawyer Award presented by the Chicago Bar Association and the Chicago Bar Foundation. He also has received pro bono awards from his law firm.

Heather was humbled and made proud by ABA YLD's recognition of his efforts. But, he also views it as a sign that he has to do more. "It's almost a pay it forward concept," he said. "I feel like I should get out there and do more for the community."

Finalists for the 2009 National Outstanding Young Lawyer Award are Keathan Frink of Ft. Lauderdale, Florida, and Cheryl Camin of Dallas, Texas. For more information, visit www.abanet.org/yld/noyla.

M. Vittoria "Giugi" Carminati, an assistant editor of the ABA YLD's *The Affiliate* and a litigation associate in the Houston office of Weil, Gotshal & Manges LLP, can be contacted at giugi.carminati@weil.com.