

MICH. L. REV. TURNS 100

VOLUME 100, NUMBER 1 of the *Michigan Law Review* features a new cover design. Gone is the dark blue cover stock and the distinctive building profile. Here is the cleaner, if more conventional, look common among today's serious law journals (a standard that the *Green Bag* confessedly does not satisfy). But wait, the fine print on page ii still reads as it has for many years: "The design on the cover is taken from an etching of The University of Michigan Legal Research Building."

STAR-BELLY JUDGES

THE NINE-MEMBER BODY now known as the Court of International Trade used to operate under a statute that included the following political diversity requirement:

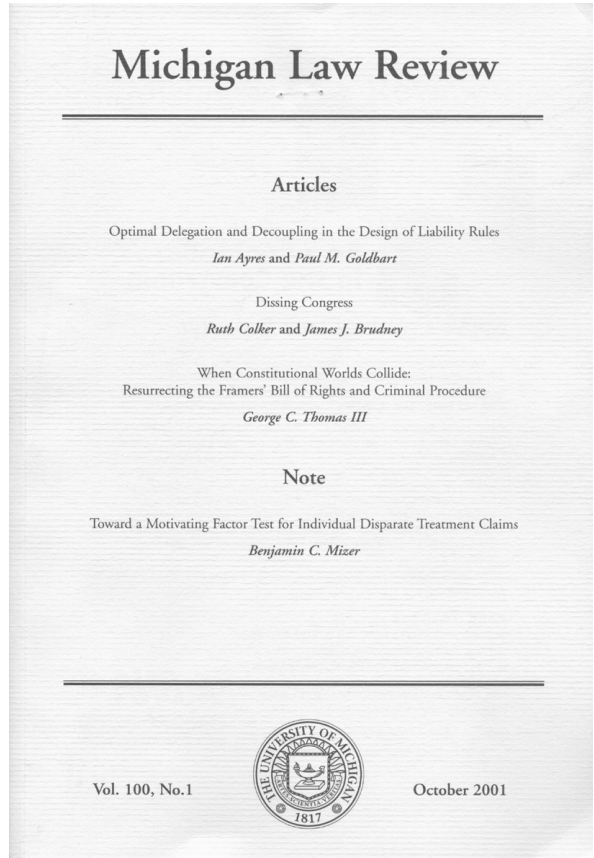
Not more than five such judges shall be appointed from the same political party.

Between 1890 and 1980, while the CIT gradually morphed from an administrative body in the Treasury Department to a full-blown Article III court, the political diversity requirement was altered only to reflect the changing titles of the CIT's members. Then came the Customs Courts Act of 1980, which eliminated the word "appointed" from the statute. Now the law simply reads:

Not more than five such judges shall be from the same political party.

Everybody knows that when Congress acts, it acts for one reason, more than one reason, or no discernible reason at all, but that regardless of the sources of congressional inspiration, we must take the results seriously. In the case of the disappearing "appointed" there is no

explicit statement in the statute (or, for that matter, in the record) to reveal what inspired Congress. The meaning of the law seems pretty clear, however, especially in light of the 1980 revision: It used to be that the president was barred from appointing candidate Smith



to the CIT if five sitting members of the court had – at the time of their appointment – been members of the same political party as Smith. Under the new 1980 version, however, the president is barred from appointing Smith to the CIT if the *current* political affiliations of five members of that court are the same as Smith's. Plus, members of the CIT are now barred from joining a political party with which five other members of the court are already affiliated.

In other words, Congress is no longer just announcing that advice and consent has been reduced to rubber-stamp rejection of all

nominees from a particular party. Now Congress is also telling individual members of the CRT what they can and cannot do with their own first amendment rights, and perhaps even defining “good Behaviour” so as to limit a judge’s choice of political affiliations. It’s a

fee, to run the Plain-Bellies through his Star-On machine. The Plain-Bellies paid and were processed and, lo and behold, they had become Star-Bellies! This outraged the original Star-Bellies, who paid McBean even more money for a trip through his Star-Off machine, just to remain different from the former Plain-Bellies. And ...

All the rest of that day, on those wild screaming beaches,

[McBean] kept fixing up Sneetches.

Off again! On again!

In again! Out again! ...

They kept paying money. They kept running through

Until neither the Plain nor the Star-Bellies knew

Whether this one was that one ... or that one was this one

Or which one was what one or what one was who.

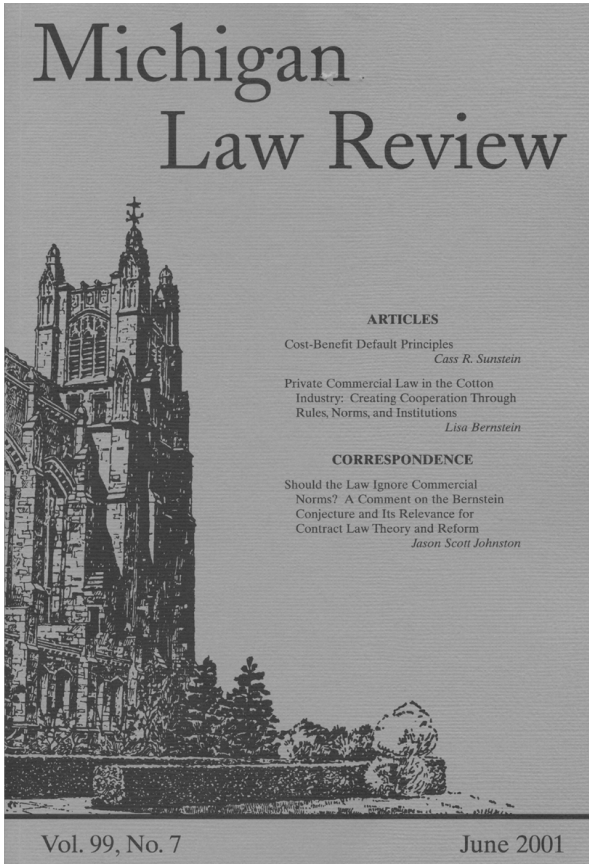
By the end of the day, McBean had all of the Sneetches’ money, which was the price of the lesson “that Sneetches are Sneetches,” and “no kind of Sneetch is the best on the beaches.”

At the CRT, against the backdrop of the political diversity requirement and a single vacancy on the nine-member

congressional trifecta – flouting Article II, Article III, and the Bill of Rights in a single statute. But the most glaring constitutional problems are not the only interesting ones.

One of the more intriguing prospective problems is reminiscent of the sufferings of the beach-dwelling Sneetches in Dr. Seuss’s classic story. Once upon a time, the elitist Star-Belly Sneetches were in the habit of mistreating the Plain-Belly Sneetches – excluding them from frankfurter roasts and that sort of thing – until the arrival of a man named Sylvester McMonkey McBean. He offered, for a small

court, imagine the scene. The Democratic judges on the CRT, who number five, are in the majority for the first time in quite a while. They like it. And they do not like the idea that the president is going to nominate a Republican to fill the current open seat, bringing Republican membership on the court up to four. So they draw straws. The two losers drop their membership in the Democratic Party and sign up with the GOP. Suddenly “five such judges [are] from the same political party,” but now it’s the Republican Party. The Republicans on the court, long-accustomed to power and resentful



of their new status, are not about to let the Democrats steal a march. They hold their own drawing and presto, two lifelong political conservatives are converts and the Democrats are in the majority again.

Before long, five former Democrats are registered Republicans and three former Republicans are registered Democrats. At which point the president's CIT nominee announces that contrary to everyone's assumptions, he is a Democrat. And the wild screaming beaches fill up again at the CIT. Various congressional committees announce hearings on the matter.

Finally, the White House announces that from now on, all nominees for all offices subject to Senate confirmation will testify that whatever else they may be, they are independent political thinkers beholden to no one. The CIT nominee appears before the Senate Judiciary Committee, testifies in conformity with the party line, and no one on the committee can bear to ask, "Are you now, or have you ever been a member of ..."

Political Judge-Picking for the Court of International Trade

Thomas J. Aquillino, Jr.	D R G U L I
Judith M. Barzilay	D R G U L I
Gregory W. Carman	D R G U L I
Richard K. Eaton	D R G U L I
Donald C. Pogue	D R G U L I
Jane A. Restani	D R G U L I
Delissa A. Ridgway	D R G U L I
Evan J. Wallach	D R G U L I

Match the current CIT judges with their apparent party affiliations. Total the number of judges affiliated with each party to learn whether your own party affiliation excludes you from consideration for the open seat at the CIT. Five judicial affiliations with your party of choice knock you out of the running. (D = Democratic Party; R = Republican Party; G = Green Party; U = United We Stand America; L = Libertarian Party; I = Independent.) The answers are on page 244.

28 U.S.C. § 251(a); Adam J. Rappaport, *The Court of International Trade's Political Diversity Requirement*, 68 U. CHI. L. REV. 1429 (2001); Dr. Seuss, *THE SNEETCHES AND OTHER STORIES* (Random House 1961).

DEEP, RICH & INFLUENTIAL

THE OFFICE OF PUBLIC AFFAIRS at the Yale Law School maintains an "Announcements" page for "upcoming deadlines, research assistant postings, and information on writing competitions and prizes." Some professors – bless them – take the trouble to add a little life and personality to even these narrowly useful but usually dull bulletin board postings. See, for example, George Priest's recent posting for research assistants:

Professor George Priest is looking for one or more research assistants to work on a number of legal, economic, and regulatory projects. Because of severe price regulation by the Law School, the monetary pay for the position is poor (though equal to what you could get from any other faculty member). This is made up for, however, by deep, rich, and influential recommendation letters which, in the past, have sometimes helped the students find employment in different positions through middle-age. If interested, students should stop by Room 354 to see Professor Priest. (posted: 7/17/01)

Or this invitation to health and philanthropy from Ian Ayres:

Professor Ian Ayres will help you stay in shape and raise money for charity. (posted: 9/5/01) Ayres will pledge \$5 to charity any day a student joins him on a run – 7 a.m., Mon.-Sat., 15 Loomis Pl. (off Canner St. next to Divinity School) – and will donate an additional \$5 any day a student beats him (he usually pushes 2 children).

http://crossroader.law.yale.edu/inside/apps/public_affairs/site/calprint.asp.