



Fair Representation Voting and the Voting Right Act

Excerpts from FairVote Amicus Brief in Montes v. City of Yakima

A FairVote Policy Perspective

January 2015

In October 2014, FairVote filed an amicus curiae (friend of the Court) brief in Montes v. City of Yakima, a case brought against the city of Yakima (WA) under the Voting Rights Act. You can read the brief [here](#). Here are excerpts from the brief relating to fair representation voting.

FAIR REPRESENTATION IS A LEGAL REMEDY FOR SECTION 2 LAWSUITS

Fair representation voting allows a population greater than a certain threshold of votes (from just over 10% in a nine-seat election to just over 33.3% in a two-seat election) to elect a candidate of choice. Where racial minority candidates of choice can expect to secure support above that threshold, courts accept the use of fair representation as a remedy to vote dilution caused by winner-take-all at-large elections. The following two excerpts include a number of citations demonstrating the legality of fair representation voting as a remedy to vote dilution claims brought under Section 2 of the Voting Rights Act.

The Voting Rights Act does not require the use of single-member districts alone as remedies for violations of the Voting Rights Act. *United States v. Euclid City School Bd.*, 632 F.Supp.2d 740, 751–52 (N.D. Ohio 2009) (adopting the defendants’ proposed at-large single vote plan over the plaintiffs’ proposed single member district plan).

Courts routinely uphold systems that include at-large elections with fair representation voting as remedies for vote dilution claims. *See, e.g., Vill. of Port Chester*, 704 F.Supp.2d 448–49 (adopting cumulative voting in at-large districts); *Dillard v. Chilton County Bd. Of Educ.*, 699 F. Supp. 870, 876 (M.D. Ala. 1988) (upholding cumulative voting in at-large districts); *Banks v. Peoria*, No. 87-2371 (C.D. Ill. 1987) (approving cumulative voting in at-large districts); *Cottier v. Martin*, 475 F.Supp.2d 932, 932 (D.S.D. 2007) (imposing cumulative voting).

FAIR REPRESENTATION IS AN EFFECTIVE OPTION FOR RACIAL MINORITY COMMUNITIES

Jurisdictions that have adopted fair representation voting in response to voting rights lawsuits have seen those remedies work for the racial minority community. The following excerpts demonstrate that under appropriate circumstances, when localities adopt fair representation voting, racial minority communities can realize actual representation in at-large elections.

Fair representation systems ... have consistently elected the preferred candidates of racial minorities when their participation rates approach the threshold of exclusion, and **this has included elections in which those racial minority candidates were heavily outspent**. *See* Steven Hill & Rob Richie, *New Means for Political Empowerment in the Asian Pacific American Community*, 11 HARV. J. ASIAN AM. POL’Y REV. 335, 340 (2000–2001) (citing election of Bobby Agee in Chilton County, AL despite being outspent 20-1 by the highest spending candidate).

Fair representation voting methods have proven highly effective as remedies for Voting Rights Act cases. Many jurisdictions with minority populations that had gone unrepresented under winner-take-all at-large systems elected representatives preferred by those minority

populations for the first time using fair representation voting methods. *See, e.g.,* Engstrom, *supra*, at 125 (first Latino representative); Robert R. Brischetto & Richard L. Engstrom, *Cumulative Voting and Latino Representation: Exit Surveys in Fifteen Texas Communities*, 78 Soc. Sci. Q. 973, 975 (1997) (first Latino and Native American representatives); Pildes & Donoghue, *supra*, at 272–73 (first black representative).

FAIR REPRESENTATION EMPOWERS ALL VOTERS

Fair representation voting not only remedies vote dilution in a legal and effective manner. In many ways it helps to activate racial minority communities and empower voters citywide. The following excerpts two quotes cite to scholarship noting that places with fair representation voting have empowered racial minority communities and even begun to break down the seemingly intractable problem of race-based polarization itself.

The inclusion of [fair representation] at-large seats will **incentivize Latino-preferred candidates to activate Latino voters**, who currently vote at much lower rates than white voters, thus increasing representation and empowering voters throughout Yakima. *See Vill. of Port Chester*, 704 F.Supp.2d at 453; *see also* Briffault, *Lani Guinier and the Dilemmas of Democracy*, 95 COLUM. L. REV. 418, 424 (1995) (“The [Voting Rights] Act was intended to initiate a process of political mobilization [and] grass roots organization.”).

In fact, there is compelling evidence that fair representation voting **fosters the construction of cross-racial coalitions** among both voters and legislators. *See*, Steven J. Mulroy, *Alternative Ways Out: A Remedial Map for the Use of Alternative Electoral Systems as Voting Rights Act Remedies*, 77 N.C. L. REV. 1867, 1903 (1999); Richard H. Pildes & Kristen A. Donoghue, *Cumulative Voting in the United States*, 1995 U. CHI. LEGAL F. 241, 297 (1995).

FAIR REPRESENTATION WORKS BEST UNDER APPROPRIATE CONDITIONS

Fair representation voting typically is successful in representing like-minded voters when their voting share is above a certain threshold of votes. To ensure that it works well for racial minority populations, their voting power should approach that threshold. At that point, fair representation allows them to be represented and even gain additional representation as demographics change and they gain crossover support from cross-racial coalition-building. These excerpts note some of the most important conditions for use of fair representation voting.

Rather, **the inquiry must look to the facts specific to each individual case**. *See Harper v. City of Chicago Heights*, 223 F.3d 593 (7th Cir. 2000), 600 (“[A]t large procedures that are discriminatory in the context of one election scheme are not necessarily discriminatory under another election scheme.”). ... [W]hether [fair representation voting] is sufficiently remedial turns on whether the threshold of exclusion is low enough to provide Latino-preferred candidates with the opportunity to be elected. *Euclid City School Bd.*, 632 F.Supp.2d at 761–62.

Regardless of remedy, we recommend that Yakima conduct a voter education campaign. Remedies can best achieve their full potential if eligible voters and candidates are aware of the change and the potential it creates for fair representation. *See Vill. of Port Chester*, 704 F.Supp.2d at 451. ... This is especially true where vote dilution is due in part to historical discrimination in education and socio-economic factors, a point Plaintiffs are right to raise. *Id.*