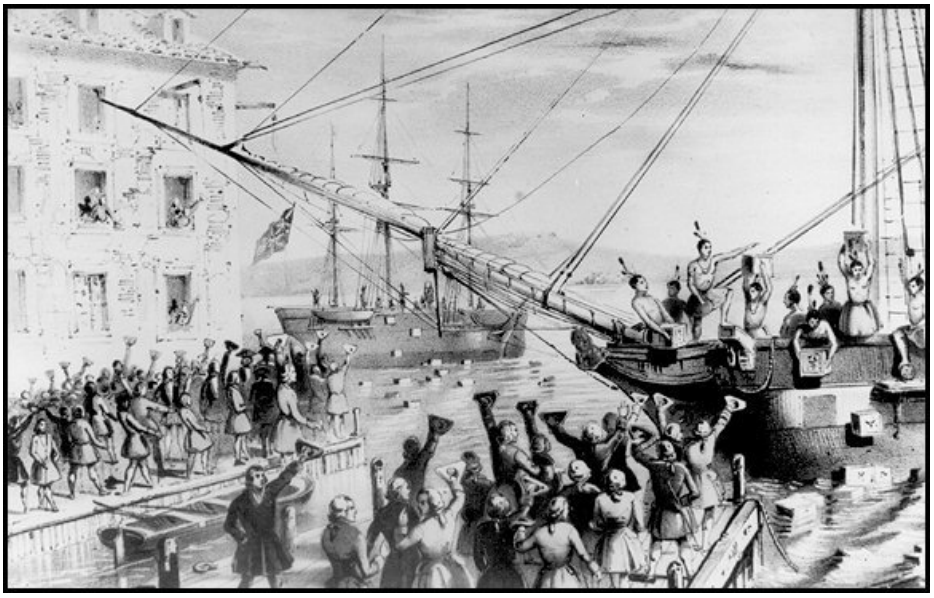
FAIRVOTE POLICY
PERSPECTIVE

The Missing Half:
Ensuring Fair Representation in Post-merger Essex, VT



By Jack M. Santucci
Program for Representative Government

April 1, 2005

Introduction

Adjacent localities often merge governments for various reasons: to simplify local taxation or deliver more efficient services, for example. The Town of Essex and Village of Essex Junction now are holding such a discussion. The Merger Task Force is discussing whether and how a merger could be accomplished. In many ways, this provides a unique opportunity to heal old rifts that have developed between the communities. But a large question overshadows the merits of a merger: *how will residents of both communities be represented in a combined government?*

Demographics and Consequences

Of the 18,626 total residents in Essex, 10,035 live in Town, and 8,591 live in the Village.[1] Both groups elect a Town Selectboard, while Village residents are represented by a second layer of government, a Board of Trustees, which levies separate taxes to provide supplemental services in the Junction. The Selectboard historically has had no members elected from the Village. This is due to a winner-take-all election system that grants 100% of the Selectboard seats to 50.1% of the population – in this case the majority being from the Town. The double tax burden and consistent lack of Village representation on the Selectboard combine to reinforce mutual mistrust between Town and Village residents. If a merger proceeds to eliminate the Village Board of Trustees and creates another winner-take-all election method, then Village residents will be faced with the true prospect of *"taxation without representation."*

With a merged form of government on the horizon, the Merger Task Force has an unprecedented opportunity to revamp and revitalize local representation. But before any hasty decisions are made that would recreate the same representation problems now facing Essex, all options should be on the table. *Now is the time to seriously consider adopting proportional voting and move beyond the false dichotomy of districts vs. at-large elections.*

The Consequences of Winner-take-all Politics in Essex

Election systems come in many forms, ranging from fully proportional to fully winner-take-all, and everything in between using districts or at-large hybrids. A choice of electoral system has dramatic consequences for the quality and content of representation, so any decisions must be made with great care. As a common characteristic, winner-take-all systems mean that a candidate (or slate of candidates) must have the support of 50% plus one voter to be *guaranteed* election. At-large systems maximize this winner-take-all effect, as in Essex. In practical terms, this means a demographic group representing slightly over 50% of a voting population can sweep *every* seat in an at-large election.

[1] Source: 2000 U.S. Census.

This unrepresentative dynamic is operating in Essex Selectboard elections. With 7,880 of 14,007 total eligible voters, Town voters comprise 56.3% of the total electorate.[2] As long as they vote in a geographic block, as they traditionally have, they can sweep every seat in every election. *The 43.7% of voters (6,127) living in the Village consequently win no representation, even though they amount to almost half of the Essex voting population.*

Geographically Polarized Voting

The most recent at-large, winner-take-all Selectboard election between Alan Nye and Village President Larry Yandow illustrated the dynamic. Voters re-elected Nye to a sixth term with 54.5% of the vote – 515 votes to Yandow's 430 votes.[3] Vote totals (54.5 to 45.5%) closely mirror the Town/Village demographic breakdown (56.3 to 43.7%). In reality, voting behavior closely mirrored the geographic polarization one would expect under winner-take-all:

- an overwhelming win for the Town candidate, Nye, among Town voters (401 Town votes to 171 Village votes),
- and a predictable loss for the Village candidate, Yandow, among Town voters (259 Village votes to 114 Town votes).[4]

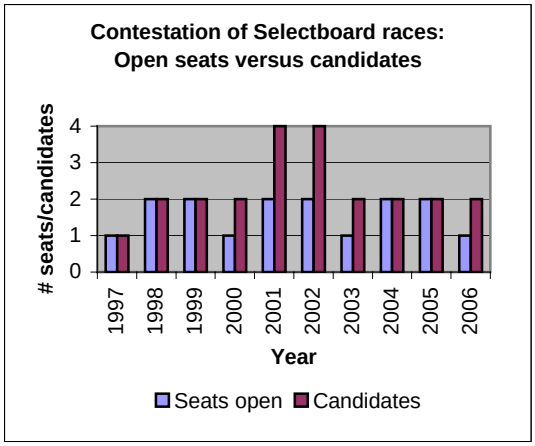
No member of today's Selectboard is a Village resident. In fact, no Village resident has sat on it since Gerald Donahue in 2000. Moreover, Donahue was the only Village resident to sit on the Selectboard since 1994. Over the last ten races, Village residents have run against incumbents only three times – in 2006, 2002 and 2000 – and lost every single race.[5]

Winner-take-all politics don't just deny the Village representation. They drive down turnout, competition and the desire to participate in general. Town residents know they have enough votes to sweep an election, so they don't come out in force. Village residents know they'll lose, so they don't vote and their candidates don't contest races.

[2] Source: Town of Essex.
[3] Source: "Voters Reelect Nye," *Essex Reporter,* March 10-17, 2005.
[4] Source: Town of Essex.
[5] Source: Town of Essex.

Competition and Uncontested Seats: 1997-2006

The winner-take-all syndrome in effect in Essex means voters view election outcomes as foregone conclusions. The conclusions seem so foregone that, in at least four of the last ten Selectboard contests, candidates ran unopposed.[6] The effect of persistently uncontested races is a lack of accountability for voters whose choice then is to ratify the status quo or stay home. In the ideal world, election systems are designed to maximize voter participation and representation, and to create mechanisms for accountability and expression of voter preference. Elections should not be designed to systematically disenfranchise substantial numbers of voters, nor should they be designed solely for the purpose of incumbent protection.



Indeed, the current method of election in Essex does just that, as of the last five contested races, Villagers challenged incumbents in only three: 2006, 2002 and 2000.

Impact on Voter Turnout: 1997-2006

Where winner-take-all makes the result a given, voters have a strong disincentive to go to the polls. Turnout over the considered period tells just such a story. Except when Selectboard races coincided with U.S. presidential primaries in 2000 and 2004, turnout was markedly less than 10% of eligible voters.[7] This dismal level of participation again indicates decreased opportunities for accountability, and it allows a small fraction of voters to control the outcome of an election for a group ten times as large.

Year	Turnout	Eligible Voters	% Turnout
1997	403	11,809	3.41%
1998	823	12,078	6.81%
1999	670	12,721	5.27%
2000*	3,377	13,098	25.78%
2001	732	13,586	5.39%
2002	1,274	13,672	9.32%
2003	901	13,960	6.45%
2004*	2,716	14,216	19.11%
2005	400	13,994	2.86%
2006	945	14,007	6.75%

Asterisks (*) denote presidential primary years.

Note that the highest turnout outside of a presidential primary year was in 2002, when Villager Deb Billado ran and lost. Looking at the two primary years alone, the presence of a Village candidacy positively affects turnout. The highest year for turnout on record was 2000, when Villager Leo Couture ran and lost. 2000 saw over 5% higher turnout than 2004, the other presidential primary year, when no Villager ran. If competition increases turnout, competition under a truly representative election system would increase it even more because it is not enough for a race to be contested. The challengers, when backed by a sufficient number of voters, need to have an actual opportunity to win. Additional

[6] Source: Town of Essex. Note: The 1999 Selectboard race may have been a fifth unopposed case. When data were gathered, there was not a ballot on file for that year.
[7] Source: Town of Essex. Note: Presidential primary years in the table are marked with asterisks.

benefits of contested races and increased turnout are greater debate within a larger range of issues, and incentives to campaign in more neighborhoods.

The Problem with Single-member District, Winner-take-all Systems

While shifting Essex's election system to a single-member district system might seem like an attractive solution to the aforementioned problems, district systems bring their own set of unique problems.

First, where the boundaries of districts are drawn can have a huge effect on who is likely to win election. As a result, gerrymandering to protect incumbents or weaken political enemies is common under single member district systems. Second, single member district elections are prone to the spoiler dynamic. Where more than two viable candidates split the vote within a district, the "winner" of an election can often be the candidate whom the majority of voters liked least. Generally, parties or slates will therefore limit the number of candidates running to avoid this scenario, leaving voters with minimal choice. These dynamics mean that, in the vast majority of single member district elections, voters' only real choice is to ratify the candidate of the majority party or faction in their district.

The Problem with Multi-member District, Winner-take-all Systems

Creating two multi-member, winner-take-all districts – one for the Junction, one for the Town – may seem like an attractive option. While it would address the lack of Village representation on the forthcoming Council, it would recreate the other drawbacks of winner-take-all systems in two key areas. First, it would polarize the Council's deliberations by making each set of Councilors accountable only to their side of Essex. This would be compounded by the logic of campaigns under district-based winner-take-all: Town candidates would only have incentives to reach out to Town voters, and Village candidates would do the same.

This speaks to the second problem of multi-member winner-take-all districts: that they virtually ensure entrenched and predictable outcomes for each district. The Village candidates will win all of the Village district seats and the same for the Town candidates. As a result, accountability is reduced, and voters will be again left with little incentive to turnout and merely ratify a foregone conclusion.

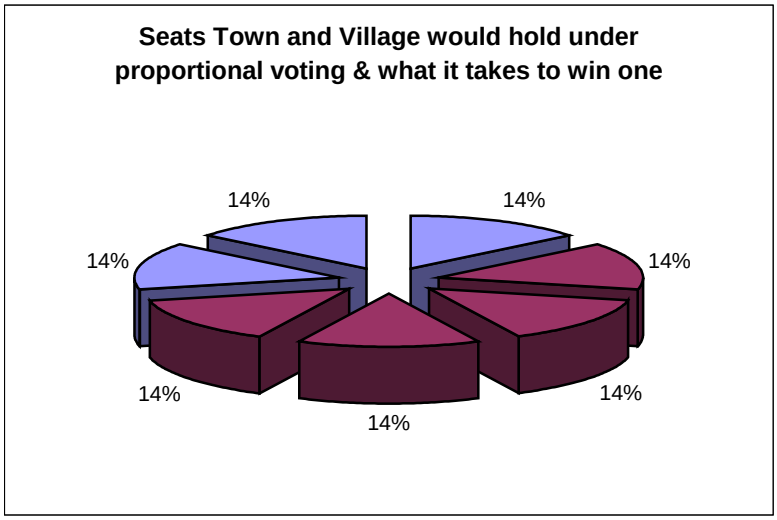
The Proportional Voting Solution

Through proportional voting electoral systems, like-minded groups of voters win legislative seats in better proportion to their share of the population in an at-large election. Whereas winner-take-all elections award 100% of power and representation to a 50.1% majority, proportional voting systems allow voters in a minority to win a fair share of representation, even while the majority wins a majority of seats. In short, everybody wins. Proportional voting describes a broad range of methods that require at least some legislators to be elected in at-large or multimember districts.

A. Proposal One: Thresholds of election and Town/Village representation under 7-member proportional voting

A proportional voting system would give both Town and Village voters a real chance to win a fair share of representation. It would reverse alienation and civic disengagement by getting at the root of Essex's winner-take-all problem: elections as foregone conclusions, where a majority dominates. Elections are foregone conclusions under winner-take-all because voters representing just over half a population easily sweep every seat. In other words, the threshold is 50% plus one vote. Depending on how many seats are filled at once, proportional voting reduces this threshold so that smaller but substantial groups can win seats. The more seats filled at once, the lower the threshold of election. The lower the threshold of election, the more proportional the result.

The chart at right illustrates approximate election thresholds and likely outcomes were Essex to elect all seven members of the proposed Town Council at the same time using a proportional voting system. The threshold for each seat is just under 14% (12.5%)[8] so that every seventh or so of the voting population can elect one member to the Council.



That proportional voting reduces the threshold from a majority to some lesser percentage *does not mean the majority will not rule*. In the example at right, likely Town seats are represented by the darker shade. Village seats are filled with the lighter shade. Assuming the 56% of voters living in the Town vote as a block, they can expect to win a four-seat majority (56% ÷ 14% = 4 seats). Village voters can expect to win a three-seat minority – more closely tracking their share of the Essex population.

B. Proposal Two: Thresholds and representation under staggered (3-4) Town Council with proportional voting

A competing proposal argues for staggered elections with three seats filled in one election, four filled in the next, using a proportional voting system. In the three-seat contest, the threshold is about 25% (see footnote 8). Town voters would claim two

[8] Note: Thresholds of election are determined using the Droop formula. The percentage of votes needed to guarantee election to one seat can be calculated for any scheme, regardless of how many seats are being filled, using this formula: **[100% ÷ (#seats + 1)] + 1 vote**

seats, and Village voters would win one. In the four-seat contest, the threshold is about 20%. Likely outcomes would be two seats for Town voters and two for Village voters, or three for the Town and one for the Village. In either case, the total composition of the Town Council would be a Town majority with two or three seats for the Village.

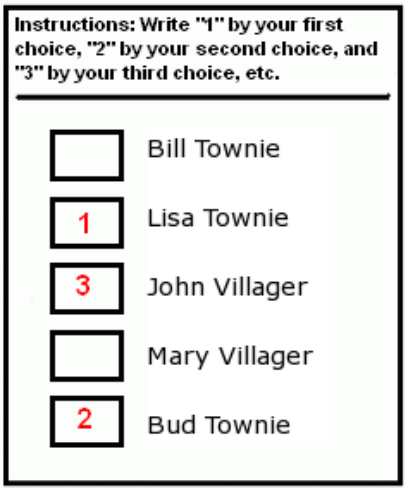
While this system would be markedly better than the current winner-take-all election system, FairVote recommends an unstaggered 7-member at-large proportional voting system. The fewer the seats elected per election, the higher the threshold (see footnote 7). The higher the threshold, the harder for a minority to get elected, and the less proportional or fair the outcome. If the election were broken up over three cycles, a three-three-one stagger would be optimal, likely guaranteeing two seats to Village voters. A three-two-two stagger would limit Villagers to one seat.

To reiterate, the more seats filled at the same election, the more proportional the result. Electing all seven seats at once would be best, guaranteeing a four seat/three seat council split. Electing fewer than three seats in any given cycle would drastically hinder Villagers' capacity to elect a representative in that cycle.

C. Three types of proportional voting system options

Proportional voting systems, like winner-take-all systems, are a family or category of election method. Around the world and within the United States, there are several types of proportional voting systems in use. Each type has different merits and consequences for representation. A description of the three most commonly used proportional voting systems in use within the United States follows.

1. Choice voting*:* To vote, voters simply rank candidates in order of preference, putting a "1" by their first choice, a "2" by their second choice and so on. Voters can rank as few or as many candidates as they wish, knowing that a lower choice will never count against the chances of a higher choice.



How it works: To win under choice voting, candidates need an exact number of votes called a "threshold". For example, in a ten-seat legislature, candidates need roughly 10% of votes to win, and the threshold would be approximately 10% of the total number of votes cast. After counting first choices, candidates with the winning threshold are elected. To maximize the number of voters who help elect someone, "surplus" ballots beyond the threshold are transferred to remaining candidates according to voters' next-choice preferences: in the most precise method, every ballot is transferred at an equally reduced value. After transferring surplus ballots until no remaining candidate has obtained the winning threshold, the candidate with the fewest votes is eliminated. All of his/her ballots are distributed among remaining candidates according to voters' next-choice preferences. This process continues until all seats are

filled. Computer programs have been developed to conduct the count, although the ballot count often is done by hand.

Where it is used: Choice voting effectively eliminates the spoiler problem, and can encourage coalition-building among minority groups and parties, as candidates benefit from being one another's second choices. Choice voting has been used primarily in English-speaking nations, in large part because of John Stuart Mill's strong advocacy. Choice voting is currently used for electing such legislatures as the parliaments of Malta and the Republic of Ireland; the federal senate in Australia; the regional assembly and most cities in Northern Ireland; all local health boards in New Zealand and the city council of New Zealand's capital Wellington; and the city council and school committee in Cambridge, Massachusetts. The Citizens' Assembly in British Columbia also recommended choice voting for future elections in the province. It is also frequently used to elect the boards of non-governmental organizations.

Approximately two dozen cities in the United States have used choice voting, mostly in the first half of the 20th century when it was highlighted in the model city charter of the National Municipal League. New York City used it for five city council elections during the era of Mayor Fiorello La Guardia. Cincinnati used it for council elections from 1925 to 1955. Others municipalities using choice voting included Cleveland, Sacramento (CA), Toledo (OH) and Worcester (MA). Generally adopted to reform "machine" governments, choice voting faced persistent and ultimately successful opposition, despite voters typically opposing initial repeal efforts. The need for hand-counts and the fact that it represented racial minorities well were the main political problems for choice voting in the United States in this era.

Choice voting has won recent support from charter commissions in cities such as Kalamazoo (MI) and Pasadena (CA). It won 45% of the vote in stand-alone ballot measures in Cincinnati in 1988 and 1991 and in San Francisco in 1996.

Choice voting in Essex: Above is an example ballot for a three-seat election under choice voting, the fairest form of proportional voting. The voter has ranked his or her choices in order of preference. This voter probably is a Town resident, having given the top two rankings to fellow Town candidates.

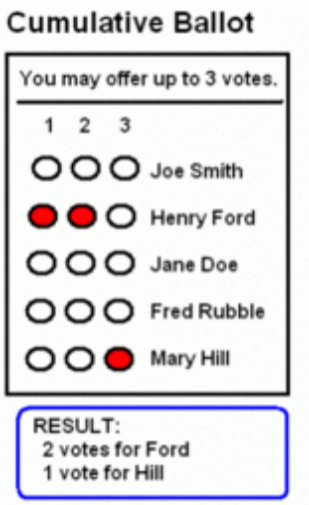
If candidate Lisa Townie already has enough votes to reach the threshold (roughly 14% of votes in a 7-seat election), this voter's ballot will count for his or her next-ranked choice: Bud Townie, in this case. And if Bud Townie already has enough votes to reach the threshold, the ballot will count for the third-ranked choice: John Villager. Likewise, had this voter's first-ranked candidate, Lisa Townie, come in last after first choices were counted, the last choice candidate would be eliminated and the ballot would have counted for the next-ranked candidate, Bud Townie. In this way, choice voting minimizes the number of "wasted" votes, i.e. votes that are not needed to elect someone because he or she already has won, or votes for a loser.

Note that this Town resident also has ranked a candidate from the Village. Proportional voting in this way encourages consensus and coalition-building. Rather than campaign on the weaknesses of an opponent, candidates have an incentive to, one, campaign on their own strengths and, two, campaign for secondary support from their opponents' supporters.

Beyond encouraging consensus, proportional voting will encourage competition and therefore turnout. Because Village residents would have a real chance of winning seats, both Town and Village voters will have to come out to support their candidates.

Because Essex's Diebold-produced voting machines do not support ranked ballots, voters would have to rank their choices on paper ballots, which election administrators would count by hand. In a town of 14,007 voters, seldom more than 10% of whom turn out, this is a simple task that can accomplished by volunteers or election officials, with training. Burlington, for example, recently counted ranked choice ballots by hand for its mayoral race. While Diebold optical scan equipment could be used to tally first-preference votes in the first round, tabulators ultimately had to count by hand in the instant runoff round. At least in Burlington's case, hand-counting wasn't a problem.[9]

2. Cumulative voting: Cumulative voting would achieve proportional election outcomes without ranked ballots, hand counts or multiple rounds of counting.



How it works: In cumulative voting, voters cast as many votes as there are seats. But unlike winner-take-all systems, voters are not limited to giving only one vote to a candidate. Instead, they can put multiple votes on one or more candidates. For instance, in an election for a five-seat body, voters could choose to give one vote each to five candidates, two votes to one candidate and three to another, or all five votes to a single candidate. If members of minority group work together and get behind a single candidate, "plumping" all of their votes on him or her, they can hope to get someone elected, even if they only make up a small share of the population. Voting rights scholar Lani Guinier and Supreme Court Justice Clarence Thomas have promoted cumulative voting as a colorblind means to provide fair minority representation.

Where it is used: Cumulative voting was used to elect the Illinois state legislature from 1870 to 1980. In recent years it has been used to resolve voting rights cases for city council elections in Amarillo (TX) and Peoria (IL), for county commission elections in Chilton County (AL) and for school board elections in Sisseton (SD) and more than fifty other jurisdictions; in most cases a member from the protected minority was elected following the implementation of cumulative voting. Cumulative voting in 1994 was imposed by a federal judge in a Maryland voting rights case.

[9] Source: Ober, Lauren. "IRV system deemed a success," *Burlington Free Press*, March 9, 2006.

Many corporations use cumulative voting to elect their Boards of Directors, in order to represent the interests of minority shareholders. About 10% of the S&P 500 use cumulative voting, including AOL, Toys 'R' Us, Walgreen's and Hewlett-Packard. *West Virginia also requires elections for county charter commission members to be conducted by cumulative voting, to ensure representation of a diversity of viewpoints when choosing a form of government and other charter amendments.*

Cumulative voting in Essex: The ballot above is an example cumulative ballot for a three-seat election. Each voter may cast as many votes as there are seats. In contrast with winner-take-all, however, the voter may distribute those votes among candidates in whatever manner he or she chooses. The tabulation is simple: the top vote-getters win seats. Cumulative voting delivers proportional results, that is, majority rule and minority representation without the perceived implementation headaches of choice voting. Cumulative voting does not violate the "one person, one vote" principle. While it is true that each voter has more than one vote to cast, each voter also has an equal amount of voting power, as required by the U.S. Supreme Court.

This system would not give Village voters a disproportionate amount of influence over the Council. While it is true they would be able to cast more than one vote for an individual candidate (i.e. "plumping" their votes on him or her) that would not hurt Town candidates. It would only help the "plumped" candidate(s) win a Council minority.

3. Limited voting: Of all the proportional voting systems currently used in the U.S., limited voting is the simplest to understand.

How it works: In limited voting, voters cast fewer votes than there are seats to be elected, so ensuring that a majority group can control the majority of seats, but not all seats. The greater the difference between the number of seats and the number of votes, the greater the opportunities for fair representation. Versions of limited voting are used in Washington, D.C., Philadelphia (PA), Hartford (CT) and many jurisdictions across North Carolina and Alabama. It has been used successfully to resolve several Voting Rights Act cases.

The threshold of election is a bit different under limited voting; it depends on how many votes each voter is permitted to cast. The more votes each voter can cast, the lower the threshold.[10] FairVote proposes giving each voter one or two votes. In a seven-seat race, this results in thresholds of 12.5% or 11.1%, respectively. In staggered three-four races, one vote would result in thresholds of 25 and 20% respectively, two votes in thresholds of 20 and 16.7% respectively. Using either one-vote or two-vote limited voting would guarantee a Town majority and Village minority on the Council – all with minimal changes or hassle for election administrators.

[10] Note: The winning threshold under limited voting can be calculated for any number of seats and any number of votes using the following formula: **[100% ÷ (#seats + #votes)] + 1 vote**

Responses to Common Objections

A. Ranked ballots, multiple votes, limited votes – won't this just confuse voters?

No. Each system – choice, cumulative and limited voting – is used for at least one (usually more) American governmental election with relative success.[11] Burlington's most recent use of ranked ballots was extremely successful; only one in 1,000 ballots was incorrectly marked.[12] Empirical research does not support the conclusion that proportional systems are confusing. One study found that voters thought cumulative voting both less confusing and more fair than single- and multi-winner winner-take-all systems.[13] As far as choice voting goes, the Burlington City Market already uses it to elect a Board of Directors.

B. It takes too long to count ranked, cumulative and limited ballots.

While it takes longer to count ranked ballots under choice voting than in a winner-take-all election, Essex election administrators would only be handling a few thousand of them. This would result in only a few hours of extra tabulation time if hand-count were used, and no extra time if computer tabulation were used. New York City handled millions of ballots each school board election cycle for about 40 years, with no problems in prompt reporting of results. Burlington in March, 2006, handled several thousand in one day. Long before computerized voting was viewed as a potentiality, over two dozen cities in the United States were counting ranked ballots without crisis. Cambridge, MA has been doing so for nearly six decades.

The same criticism does not apply to cumulative and limited ballots. It is not necessary to count successive preferences; tabulators need only to tally up marks. This can be done easily and automatically by most modern voting equipment – and very simply by hand, as under the current winner-take-all system. Administrators would recognize no difference in their duties.

C. Proportional voting is a form of affirmative action.

While proportional voting creates opportunities for minority representation – issue, racial or residents of the Village – it does not predetermine election outcomes in the way that gerrymandering winner-take-all districts does. Voters must seize on the opportunity by turning out. Conservative Supreme Court Justice Clarence Thomas recognized this in *Holder v. Hall* when he noted that cumulative voting would provide a race-neutral means of achieving fair representation.[14]

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[11] Source: FairVote, "Communities in America Currently Using Proportional Voting," http://www.fairvote.org/?page=243.
[12] Source: "Testimony of Caleb Kleppner on Burlington's instant runoff election," http://www.fairvote.org/index.php?page=1746.
[13] Source: Timpone, Richard J. "Electoral Systems Matter: An Experimental Examination of Different Systems," http://www.fairvote.org/?page=532.
[14] Source: *Holder v. Hall*, 114 S. Ct. 2581, 2601-02 (1994).

D. When running for office, I won't be able to tell what percentage of voters supported me. I won't be able to gauge public satisfaction with my work as an elected official.

Candidates can always consult exit polls. Even in their absence, under choice voting, an examination of who got first-preference votes will indicate the extent of support, just as under a winner-take-all system, with the added benefit of allowing candidates to study who their voters supported with secondary preferences. If anything, choice voting provides more, not less, information about which officials are accountable to certain voters. Under cumulative and limited voting, it is also still possible to determine a candidate's level of support. By dividing the number of total votes received by the number of votes each voter had to cast, a candidate can tell the fewest number of voters to have supported him or her.

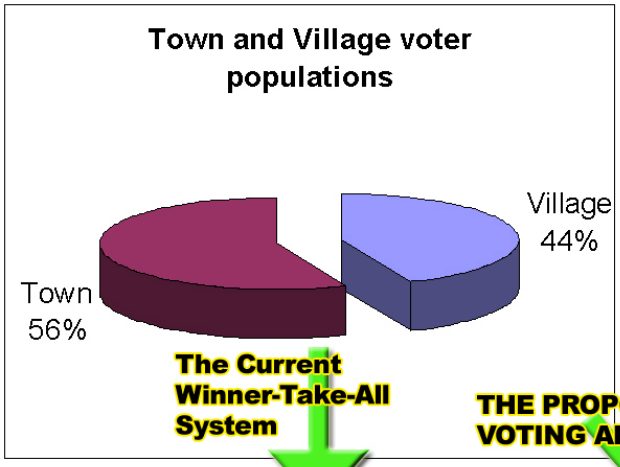
Proportional Voting: Not Later, Now

The merger of two or more jurisdictions into a larger one is the best time to switch to a proportional voting system. Incumbent officials usually are those people who can make the change happen. Yet they have an interest in a system which benefits them on election day. These short-term considerations must be set aside, however, in favor of the longer-term benefits for city governance and civic engagement.

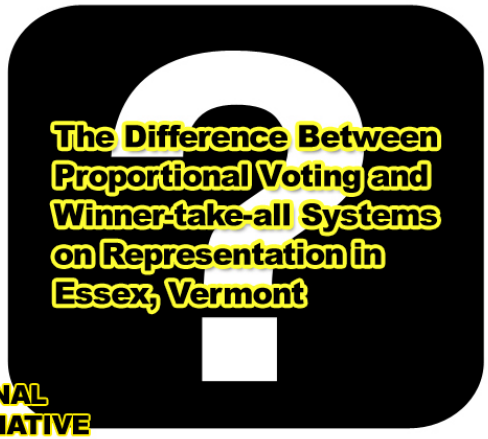
Switching to proportional voting simultaneously with a merger seemingly poses a dual threat to incumbents. But this should be seen as an opportunity, rather than a challenge. On one hand, the merger means changes to the composition of the *electorate*. On the other, switching the voting system means changes to how that electorate *affects* the composition of the Council.

Were the merged Essex to retain a five-member council and adopt a proportional voting system, it is true that some incumbents would lose seats to challengers. Yet since the Merger Task Force has proposed expanding the Council to seven members, there are opportunities for incumbents to retain their seats, all while allowing Village residents their fair share of representation. Were Essex to retain its winner-take-all election system, Council expansion would do nothing to improve representation; Town voters would sweep seven seats instead of the historic five. On the other hand, expanding the Council and adopting proportional voting at the same time means most if not all incumbents could retain their seats while creating space for Village newcomers.

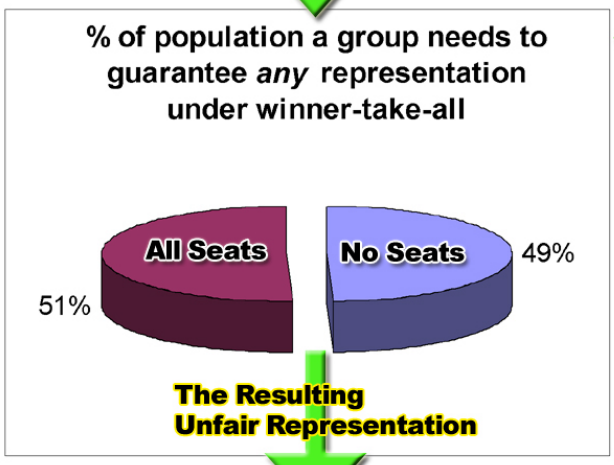
With the historic opportunity to bring fair representation to Essex, the time is now to adopt a proportional voting system. Disenfranchised voters living under taxation without representation should not have to wait for a fair election system until after a new set of incumbents comes to office.



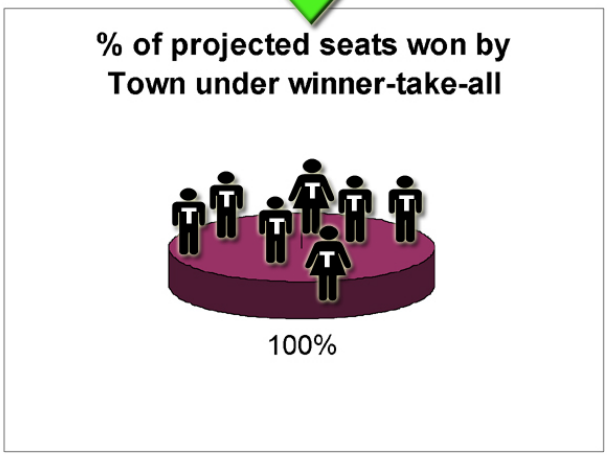
The Current Winner-Take-All System

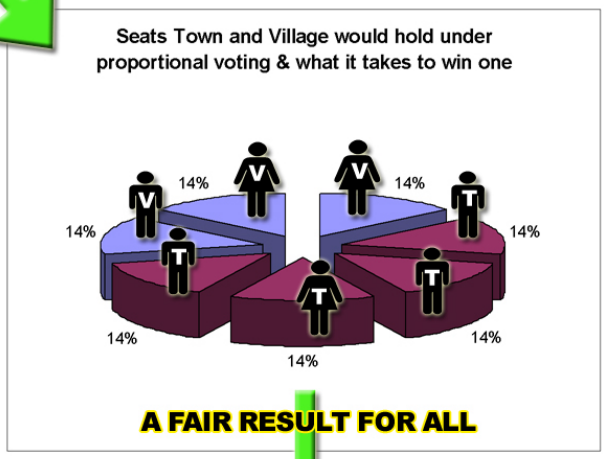


THE PROPOTIONAL VOTING ALTERNATIVE



The Resulting Unfair Representation





A FAIR RESULT FOR ALL

Proportional Voting Adheres to the Following Principle: *The Right to Rule Belongs to the Majority, But the Right To Representation Belongs to All.*

Anything else would result in taxation without representation in Essex.

PIE GRAPH KEY
T = One Town Representative
V = One Village Representative

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