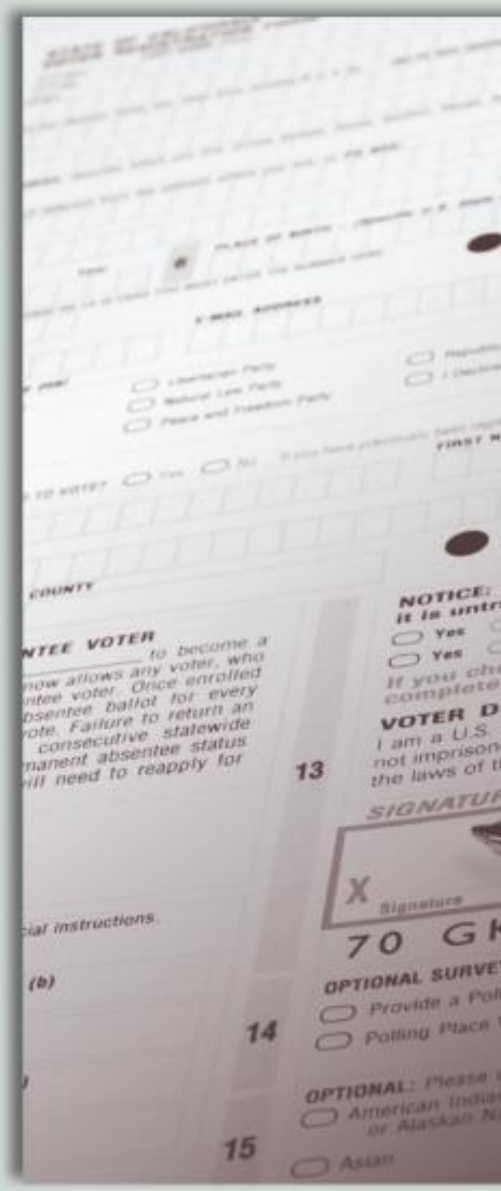
Fair Representation and the Voting Rights Act

Remedies for Racial Minority Vote Dilution Claims



Fair Vote

Introduction

Fundamental to any representative democracy is the right to an effective vote. In the United States, that right is protected on the federal level by the Constitution (particularly the 14th, 15th, 19th, 23rd and 26th amendments) and the Voting Rights Act of 1965. Nevertheless, voting methods themselves may serve as barriers to fair representation. This is most evident in the many local elections that employ a winner-take-all at-large voting system. Under this system, a slim majority of voters has the power to deny representation to all others. For this reason, winner-take-all at-large voting has been the chief target of lawsuits brought under Section 2 of the Voting Rights Act to uphold the voting rights and power elect candidates of choice of racial and ethnic minorities covered by the Act.

To remedy this unfairness, the usual approach has been conversion of at-large voting systems held with winner-take-all voting rules to single-winner districts. Under this approach, local districts are formed so that a racial minority makes up the majority of votes in at least one district, and thus can elect a preferred candidate. This solution has been effective for racial minorities and has remedied thousands of minority vote dilution lawsuits and dramatically increased racial minority representation where it has been applied. However, the effectiveness of majority-minority districts as voting rights remedy is dependent upon the geographic concentration of racial minorities. Geographic dispersion can limit majority-minority districts to fewer seats than a given racial minority's share of population. Even where districts provide an effective remedy in the short-term, they may not adequately represent the jurisdiction's diversity after its demography changes. Finally, many racial minority voters will be unable to elect preferred candidates when not living in majority-minority districts.

For these reasons, it is advantageous to consider alternatives to districts as a remedy to minority vote dilution. Under the right conditions, fair representation voting methods can be effective, legal and proven solutions within an at-large system. They reflect a different principle than the winner-take-all concept of traditional voting. With fair representation voting, a majority cannot control the outcome of every seat up for election. Instead, they ensure that the majority wins the most seats, but guarantee access to representation for those in the minority.

Some Considerations for Understanding Fair Representation Voting Systems

Jurisdictions have many options when crafting their election methods. The following descriptions focus on at-large elections (jurisdiction-wide), but also apply to systems with several **multi-winner districts**. Another consideration is the use of **staggered terms** for many local elections, which means only some seats are up for election in a given election; since staggered elections reduce the number of seats being elected, fair representation voting may be less effective for representation of smaller racial minority groups. Choice of **election date** matters as well because holding elections apart from state and national elections can mean lower and less equitable turnout. Finally, strong consideration must be given to the **election administration infrastructure** of a given community since not all jurisdictions have the voting equipment that would best facilitate use of certain voting methods.

Fair Representation in American Politics

Fair representation voting may seem new, but in fact it plays a major role in our politics. More than 100 localities electing their representations with fair representation voting systems. In the 1940s, cities like New York and Cincinnati elected city council seats with ranked choice voting, Illinois gave cumulative voting rights to voters in state legislative elections, and most state legislatures had multi-winner districts. Today, most presidential primaries and caucuses allocate national conventions delegates based on fair representation.

Winner-Take-All At-Large Voting Systems

(Block Voting or Plurality Elections)

Under this method, voters cast ballots citywide, cast one vote per candidate, and have as many votes as there are seats to be filled. In plurality voting rules, all candidates run against one another, and, the candidates with the highest vote totals win the seats. In numbered post systems, each candidate runs for a particular at-large position. But in both approaches, a like-minded majority (50% + one) of voters has the power to elect all seats. n plurality voting rules, the "effective" threshold to win can vary to be higher or lower than 50% based on the number of candidates and the cohesiveness of voters in the majority, but like-minded voters have no guarantee of representation unless part of a majority.

To Vote: In plurality voting, voters have the same number of votes as seats to be elected. For instance, if there are five seats, a voter casts one vote each for up to five candidates. Generally, a voter may also decide to cast fewer votes than the number allotted. When voting for only one person, this tactic is called "single shot voting" or "bullet voting."

To Win: The winners are the candidates with the most votes. For example, if there are five seats to be elected, the five candidates with the most votes will win.

Assessment for Racial Minority Representation: A 50% plus one majority of voters has the power to elect all seats if they all vote for the same candidates. When there are no majority requirements that trigger a runoff or there is no use of numbered posts, "bullet voting" can help those in the minority by ensuring their votes are cast only for preferred candidates; if the majority vote is fractured among more candidates, allow them to win with as little as 35% or 40% support of voters.. Generally, however, winner-take-all at-large voting rules dilute the votes of racial minorities, often preventing them from electing any seats.

A Variation - Numbered Posts

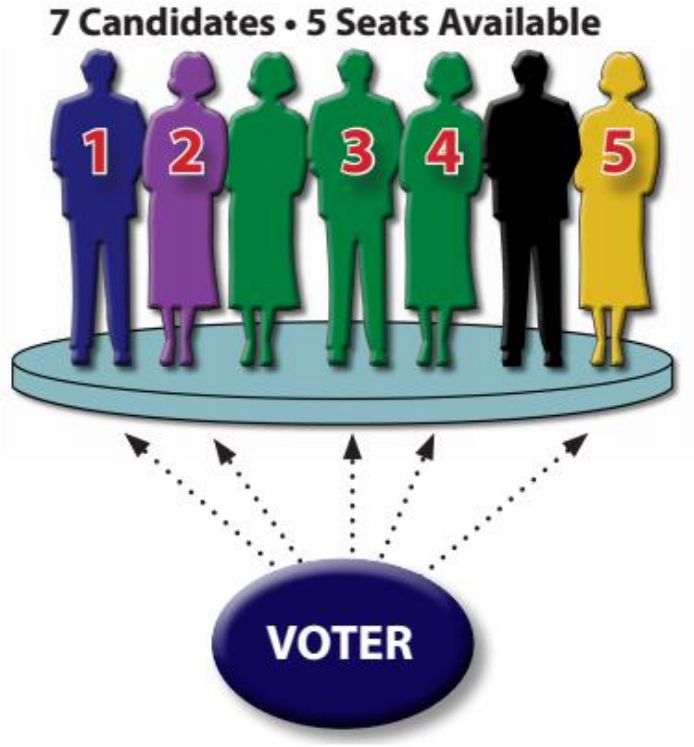
In some localities, candidates run at-large, but must run for a particular position, sometimes based on residency. Each seat must be won with at least 50% of the vote, with a runoff between the top two candidates if no candidate wins a majority of the vote. This combination of numbered positions and a majority requirement typically creates the greatest barrier to representation for those in the minority.

Ranked Choice Voting

(Preference Voting or Single Transferable Vote)

Ranked choice voting is a voting method where voters rank candidates in order of preference. Voters number their preferred candidates: one for the favorite candidate, two for second favorite, and so on. Candidates are elected by earning a certain threshold of support required to win a seat. In a one-seat elections, this "victory threshold" (see below) is just over 50%. If there are five seats, then a candidate must earn about 17% of the votes to win. The victory threshold is always the fewest votes that only the winning number of candidates can receive.

To Vote: To cast a ballot, voters rank candidates in order of preference, putting a *"1"* by their 1st choice a "2" by their 2nd choice and so on. Jurisdictions can chose to allow voters to rank all candidates or limit the number of rankings. Voters may rank as many candidates as they wish. Indicating support for a lesser candidate never counts against the chances of the voter's top choice candidate. Studies show voters handle such ballots well.



To Win: To determine winners, ballots are initially counted as one vote for 1st choices. A candidate wins once receiving enough votes to meet the victory threshold. Any surplus votes (those votes beyond the threshold) are added to the totals of the next-ranked choices of voters.

If there are more seats to elect, then the candidate with the fewest votes loses, and ballots cast for that candidate are added to the totals of the candidate ranked next on each voter's ballot. These rounds of counting continue until all seats are filled.

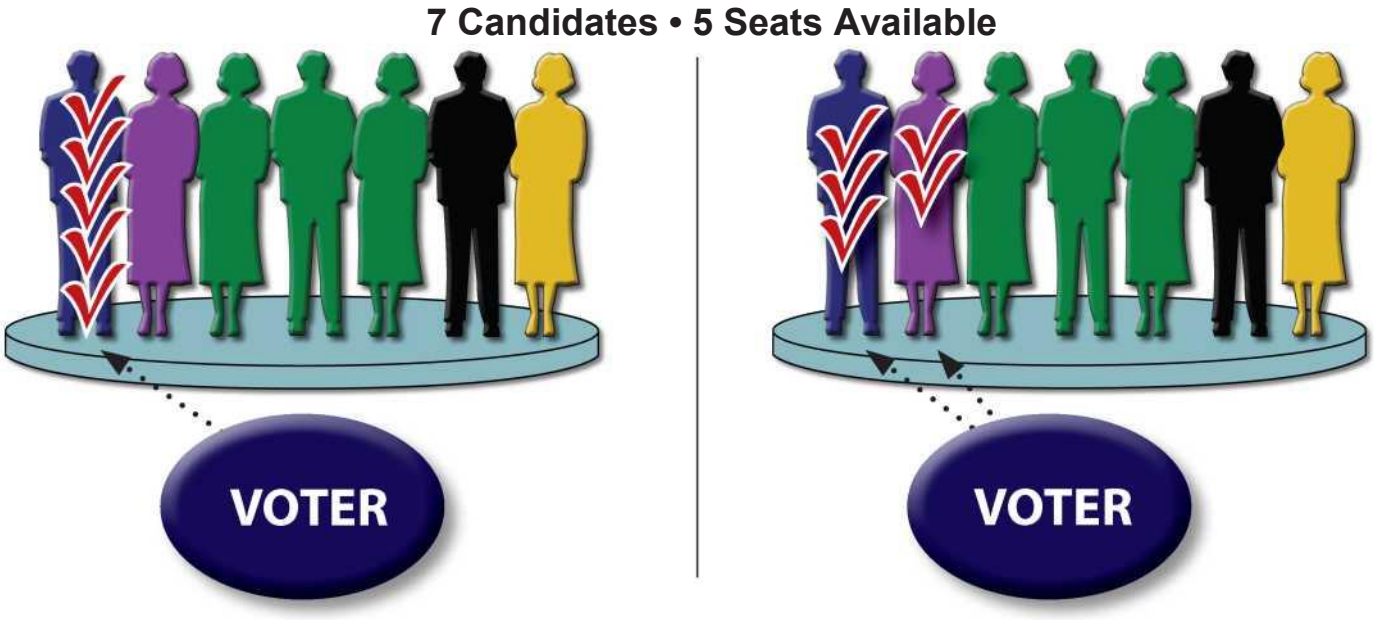
Assessment for Racial Minority Representation: Even in racially polarized communities, ranked choice voting results in racial minorities winning seats in direct relation to their support among voters. If a given racial minority group ranks preferred candidates in any order ahead of other candidates, they are *guaranteed* to elect the same share of candidates as their share of the vote. (This explains why the Department of Justice in 1999 blocked an attempted repeal of ranked choice voting in New York City.) Additionally, it fosters coalition building and more voter choice than other voting systems. Because there is an incentive for voters to consider and rank candidates outside their racial group, racial minorities gain more influence with non-minority candidates.

Victory Threshold

All fair representation voting systems lower the "victory threshold." As a percentage of the vote, the threshold is one divided by one more than the number of seats, plus one vote. This translates into a 3rd of the vote when electing 2 seats, a 4th of the vote when electing 3, and so on. Cambridge (MA) elects 9 city council seats, and the threshold is 10% of the vote.

Cumulative Voting Rights

Similar to winner-take-all at-large voting, voters have as many votes as there are seats to be filled. Unlike winner-take-all at-large voting, each voter gains cumulative voting rights and in this system's most common form can distribute his or her votes in any manner, including casting more than one vote for a favorite candidate. By allocating more than one vote to a preferred candidate, voters will increase the likelihood for that candidate to win. The candidates with the highest vote total win.



To Vote: At the polls, voters have the same number of votes to allocate as there are seats and are free to distribute votes in any manner. For example, if there are five seats to be elected, the voter can choose up to five candidates to receive one vote each, or cast all five votes for one candidate, or any combination in between.

To Win: As with traditional at-large voting, the candidates with the highest vote totals win. For example, if there are five seats to be elected, the winners are the five candidates with the most votes.

Assessment for Racial Minority Representation: When racial minority voters are greater than the victory threshold, cumulative voting rights guarantee their access to representation by allowing these voters to "plump" their votes on the same candidate. Because a minority-backed candidate might not win if members of that minority group split their votes among more than one candidate, however, those voters must weigh the potential benefits and risks of seeking to elect more than one candidate.

A Variation - "Equal Allocation" Cumulative Voting

Used in Peoria (IL) and historically in Illinois state legislative races, the "equal allocation" cumulative voting ballot looks exactly like a traditional at-large voting ballot. Voters vote for up to as many candidates as there are seats. Rather than always awarding one vote to each candidate selected, the candidates receive an equal share of that voter's votes. In an election for four seats, any voter selecting four candidates will give each of those candidates one vote. Any voter selecting two candidates will be casting two votes for each candidate. Any voters selecting one candidate will give that candidate four votes.

The Single Vote

With the single vote method, each voter has one vote in an election for more than one seat. The casting of votes is otherwise the same as with winner-take-all at-large voting, and the top vote-getters win.

To Vote: Voters have one vote.

To Win: The candidates with the most votes win. For example, if there are five seats to be elected, the winners are the five candidates with the most votes.

Assessment for Racial Minority Representation: The single vote method increases access to representation for those in the minority. The reduction of votes for all voters guarantees opportunities for racial minority voters to elect preferred candidates when greater than a certain share of the vote (the "victory threshold"). As with cumulative voting rights, however, there is a risk for vote splitting if too many minority candidates of choice run for office and split the vote. Racial minority voters are also more likely to be ignored by candidates of other racial groups than with ranked choice voting.

A Variation – Giving Voters More Than One Vote

Required by law in at-large city council elections in Connecticut, another approach is to allow voters to cast more than one vote, but fewer than the number of seats. In voting rights settlements in North Carolina, this "limited voting" approach has also been success for racial minorities. The more votes that voters can cast, however, the higher the "victory threshold" for winning becomes. In a five-seat election where three votes are allowed, the threshold to win is just over 35% of the vote.

Single Winner Districts

With Single Winner Districts, the jurisdiction is divided into geographically defined segments where only one individual is elected to represent that area for a given office. Voters can only vote for the candidates running in the district where that voter resides. Single winner districts today are the most widely used system of election for most state legislators and congressional members. District lines must be redrawn after the decennial census to make sure that the number of people in each district in a given jurisdiction is roughly the same. Some single winner districts require winners to earn a minimum share of the vote to avoid a subsequent runoff election.

To Vote: At the polls, voters will cast a ballot according to the district in which he or she resides. Voters will have one vote to cast for the single seat.

To Win: The candidate with the most votes in a district wins. For example, in a jurisdiction electing five seats, each candidate runs for election in his or her district, and the candidate who gets the most votes in that district is elected.

Assessment for Racial Minority Representation: Single winner districts are winner-take-all because the majority group is the only group that can attain representation in each district. Consequently, single winner districts provide opportunities for a racial minority to win seats when a racial minority group is the majority group within that district. The ability for fair representation is directly related to whether a majority-minority seat can be created where a candidate of choice has the power to win with a majority or plurality of votes.

Is a fair representation voting system right for your community?

No electoral system is perfect for all jurisdictions. Each system has strengths and weaknesses that must be assessed in conjunction with the social and political dynamics of the community facing an opportunity for electoral change. While voting rights advocates have long utilized the creation of minority opportunity districts to enforce the Voting Rights Act, at times the conversion of traditional at-large voting systems to single winner districts is not an optimal alternative. In these cases, fair representation voting methods like ranked choice voting can be effective and legal remedies to achieve the goals of fair representation as prescribed by the Constitution and the Voting Rights Act.

Here are some considerations when evaluating whether your community is ready for change:

Does your community use an at-large voting system?

- Is there a history of barriers to electing candidates of choice in the minority community?
- Is there broad political support and momentum for electoral change?
- Have credible racial minority candidates run and lost?
- If voter turnout rates are lower for racial minorities than for those in the majority, are there means to educate and mobilize voters?
- Is there more than one racial minority group?
- Are women winning in at-large elections and, as often the case, likely to be less likely to win in districts?
- Are racial minority voters dispersed across the city and/or are they growing rapidly in numbers?
- Does the community have flexibility in how it counts ballots or its use of voting equipment and technology?

If you have answered yes to some these questions, it might be advantageous to consider fair representation voting. Please contact FairVote for more resources or guidance.

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Example in Focus

Acting on behalf of Latino voters, the Department of Justice challenged the traditional at-large voting system under Section 2 of the federal Voting Rights Act used to elect the city council of Port Chester (NY). Even though a third of eligible voters were non-white, no non-white candidate had ever been elected to the council.

After a trial, the district court ordered Port Chester to change its system. It accepted the city's proposal to provide cumulative voting rights when coupled with having all seats elected at the same time and a major voter education program. In 2010, a Latino candidate and African American candidate were elected for the first time and turnout increased. In 2013, the Latino candidate was re-elected. The African American incumbent did not run, but another African American was elected.

Fair Representation Voting Systems in Brief

Cumulative Voting Rights

Voters have the same number of votes as there are seats to be elected. In one approach, voters can allocate their votes as they choose, including multiple votes to a favored candidate. In another approach, a voter's total votes are allocated equally to the number of candidates they support. Used as a voting rights remedy in more than 50 jurisdictions, including Peoria (IL) and Amarillo (TX).

Evaluation: Easy to explain and usually easy to administer. Often successful when those in minority seek to elect one candidate. But fair representation for those in majority and minority can be undercut by "too many" candidates splitting the vote.

"Cumulative voting allows minority group members to identify their own allegiances and their referenc... based on their strategic use of multiple votin... possibilities."

– Lani Guinier, Harvard law professor

REMEMBER

Fair representation in any voting system depends on participation.

Voter education and mobilization are essential, especially with alternative voting systems.

Ranked Choice Voting

Designed to have as many voters as possible to elect a favorite candidate. Voters rank candidates in order of preference and like-minded voters elect candidates in proportion to their support from voters Used in Cambridge (MA) and Minneapolis (MN) and in past in cities like New York, Cleveland and Cincinnati.

Evaluation; Ranked choice voting is easy for voters, but requires more sophisticated vote-counting. It is very effective in communities where those in the minority seek to elect more than one candidate or where there is more than one racial minority group. Promotes coalition-building because voters can rank candidates knowing that a lower ranked candidate will never affect the chances of a higher ranked candidate.

"It's proportional representation [ranked choice voting] that we need to provide fair representation in our community"

– Theodore Berry (First African American Mayor of Cincinnati)

The Single Vote

Voters have one vote in elections for more than one seat. It successfully helped to elect candidates of choice in dozens of jurisdictions in North Carolina and Alabama. In related systems, voters may have more than one vote, but still fewer votes than seats. The fewer votes each voter has, the more likely racial minorities will win fair representation.

Evaluation: Simple for voters to understand and easy to explain, but harder to engage in coalition-building and elect more candidates than votes allowed.

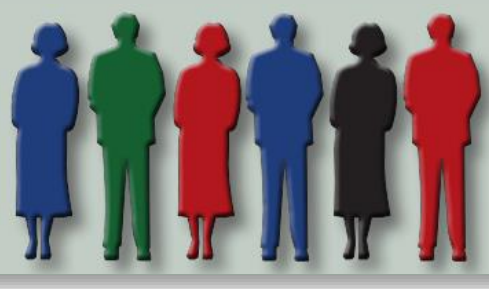
Under [the single vote system], "African Americans, women, and even those whose political ideology is not popular in this area of the country [Alabama] now have a fairer method of voicing their concerns and affecting public policy."

– Jerome Gray, Alabama community organizer

Single Winner Districts

Jurisdictions are divided into districts designed to elect one person. Voters have one vote. This is the most common way to elect local, state and Congressional members, although historically this has not been the case.

Evaluation: Districts provide opportunities for racial minorities to win if a district can be created where they are a majority of voters. They are easy to understand and administer, guarantee representation of different areas and are less reliant on voter turnout. But fair representation can depend on racial segregation and/or how lines are redrawn every decade.



Jurisdictions Which Elect Leaders with Fair Representation Voting Systems (2015)

ALABAMA

Chilton County Commission & Board of Education
Conecuh County Executive Committee
Calera City Council
Centre City Council
Guin City Council
and 21 others

CONNECTICUT

Bridgeport Board of Education
Harford City Council
Waterbury City Council & Board of Education
New Britain Board of Education
Bristol City Council & Board of Education
West Hartford Town Council & Board of Education
and 71 others

NORTH CAROLINA

Robeson County School Board
Beaufort County Commission
Alexander County Board of Education
Anson County Board of Education
Bladen County Commission & Board of Education
Martin County Commission
and 10 others

PENNSYLVANIA

Philadelphia City Council (at-large seats)
Allegheny County Council
Montgomery County Commission
Bucks County Commission
Delaware County Commission
Lancaster County Commission
and 41 others

Texas

Amarillo Independent School District Board of Trustees
Lockhart Independent School District Board of Trustees
Dumas Independent School District Board of Trustees
Atlanta Independent School District Board of Trustees
Andrews City Council
Andrews Independent School District Board of Trustees
and 46 others…

OTHER JURISDICTIONS AROUND THE NATION

Florida: Lake Park City Council ◆ *Delaware:* Wilmington City Council ◆ *Illinois:* Peoria City Council ◆ *Massachusetts*: Cambridge City Council and Cambridge School Committee ◆ *New York:* Port Chester Board of Trustees ◆ *California (in next elections*): Santa Clarita City Council and Community College District, Newhall School District, and Castaic Union School District ◆ *Ohio:* Euclid Board of Education ◆ *South Dakota:* Sisseton School Board & Wagner School Board

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