Program for Representative Government

State Voting Rights Acts

to create a proportional voting legal infrastructure

Summary

- Sizeable communities of color in dozens of jurisdictions around the nation are unable to elect representatives of their choice, despite the Voting Rights Act's promise to ensure that racial and ethnic minorities would not have their ability to elect representatives hampered by a community's voting system.
- Proportional voting systems and influence districts provide reasonable alternatives to majority-minority single-member districts, but are not currently contemplated as remedies in Section 2 Voting Rights Act lawsuits.
- Proportional voting systems have additional benefits that go beyond single-member districts, thereby making them attractive remedies to minority vote dilution.
- States have the ability to pass laws similar to the VRA, but at the state level, in order to ensure that protection of minority voting rights is not left only to the U.S. Department of Justice and federal judges.
- California provides a model for a state Voting Rights Act that both better secures protection of minority voting rights and allows different approaches to remedying vote dilution.

Sizeable communities of color in dozens of jurisdictions around the nation are unable to elect representatives of their choice, despite the Voting Rights Act's promise to ensure that racial and ethnic minorities would not have their ability to elect representatives hampered by a community's voting system. Currently, there exists a large problem with how federal judges have interpreted the crucial Section 2 of the Voting Rights Act (VRA). Under the current interpretation regime, to win a case plaintiffs must show both evidence of racially polarized voting and that a compact single-member district can be drawn in which the racial minority is well-positioned to elect a candidate of choice. But the latter part of this interpretation of the VRA is based on the faulty assumption that majority-minority single-member districts are the only remedy available for minority vote dilution. As a result, geographically dispersed communities of color are unfairly left without standing in potential VRA suits even if large in number and facing the exact same problem of racially polarized voting as they would if living in a concentrated area. This problem also leaves multiracial communities without remedy, even where the combined non-white voting population in a district might be over 50%.

Proportional voting systems and influence districts provide reasonable alternatives to majority-minority single-member districts, but are not currently contemplated as remedies in Section 2 Voting Rights Act lawsuits. Proportional

voting systems provide VRA remedies for both geographically dispersed communities, as well as multiracial communities, and have in fact been adopted in dozens of settlements of VRA litigation. Nevertheless, plaintiffs with proportional voting remedies available to them cannot bring such claims to court, unless they can also show that a viable majority-minority single-member district can be drawn. Moreover this court-made requirement for VRA liability discounts the potential of providing communities of color with the opportunity to influence the outcome of elections through influence districts, where a minority population might not make up enough to elect a representative of their choice, but where they might be large enough to strongly influence the outcome of the election.

Proportional voting systems have additional benefits that go beyond single-member districts, thereby making them attractive remedies to minority vote dilution. Proportional voting systems are shielded from the problems of shifting population sizes in districts, since they typically involve at-large elections. Furthermore, proportional voting systems often create greater incentives for cooperative campaigning and coalition-building than under single-member districts, given that candidates often run together as slates, or must rely on the support of their opponents supporters for election. These alternatives to single-member districts are often portrayed as race-neutral by courts, given that they allow voters to groups themselves into active voting blocs, rather than having district lines force a certain characteristic, such as race or geography, as the focal point of the election. That's why many communities have turned to these systems to resolve problems of unfair representation or to avoid expensive and divisive litigation.

States have the ability to pass laws similar to the VRA, but at the state level, in order to ensure that protection of minority voting rights is not left only to the U.S. Department of Justice and federal judges. Having state protections for voting rights is analogous to having a state minimum wage that is higher than the federal minimum wage. These state-level VRA's should clarify that winning a case depends on proving minority vote dilution due to racially polarized voting and on having a reasonable remedy to that vote dilution, without need for demonstrating the existence of a majority-minority single-member district. This framework would leave intact the federal interpretation of Section 2 of the Voting Rights Act, but it would create additional state-level remedies to minority vote dilution.

California provides a model for a state Voting Rights Act that both better secures protection of minority voting rights and allows different approaches to remedying vote dilution. In 2002, Governor Gray Davis approved the California Voting Rights Act of 2001.[1] This bill expands on voting rights granted under the federal Voting Rights Act by, among other things, granting standing to groups who are too geographically dispersed to elect a candidate of choice from a single member district. Hence, it is possible for states to independently strengthen the federal VRA with a state-level VRA, while allowing for proportional voting and influence district remedies in vote dilution cases. This model should be followed in other states, to ensure that the greatest number of people can be represented in elected bodies. Note: the law is currently being challenged in court, and should be vigorously defended to preserve electoral options.

[1] See CALIFORNIA ELECTIONS CODE SECTIONS 14025-14032, The California Voting Rights Act of 2001.