Making Every Vote Really Count

“Winner take all” isn’t fair—a proportional system would offer minority voices a chance for representation

By Andrew Reding

Among the most pressing problems confronting Deval Patrick as the new assistant attorney general for civil rights is how to respond to the growing number of federal court decisions casting doubt on the constitutionality of racially delineated legislative districts.

The challenges began a year ago, when, in a case involving congressional redistricting in North Carolina, several Supreme Court justices signaled their discomfort with racially determined districts, noting an unfortunate irony in using a form of electoral “apartheid” to solve problems of inadequate representation. In December, a three-judge court of Appeals ruled unanimously that Louisiana’s 4th congressional district, which snakes along the state’s borders for 600 miles, is an unconstitutional racial gerrymander. On instructions from the Supreme Court, another three-judge federal panel is presently reviewing the constitutionality of two “majority-minority” districts in North Carolina. One of these, the 12th congressional district, which meanders along three interstate highways to connect majority black communities, was the one described by Justice Sandra Day O’Connor in her majority opinion as bearing “an uncomfortable resemblance to political apartheid.”

The easiest response to these challenges would be a reflexive—and aggressive—defense of the present system. Liberal editorialists and civil rights organizations are already trying to characterize the choice as limited to upholding the status quo or returning to the bad old days of minority exclusion. There are, however, other options.

Rather than try to defend a flawed system, the Justice Department should seize the opportunity to pursue more effective strategies for achieving equitable representation. For not only do black and Latino districts tend to reinforce and legitimate patterns of racial segregation; they also reproduce the injustice they seek to remedy, by denying representation to other minorities within the so-called minority district.

The essential problem is that the very nature of our “winner take all” electoral system discriminates against minorities, and no satisfactory way has been found to fix it. As illustrated by a Florida redistricting case, in which blacks and Latinos have been battling over mutually exclusive plans to secure an additional seat in the state senate, there is no way to draw district boundaries that does not shift the burden of uneven representation from one group of citizens to another. And gerrymandering, as in Louisiana’s 4th
congressional district and North Carolina’s 12th congressional district, invites ridicule, if not hostility.

Simple justice demands a more equitable system, one designed to assure equal representation to every citizen, regardless of race, creed, political orientation, or ethnicity.

With that in mind, the vast majority of the world’s democracies have adopted forms of proportional representation. Under proportional representation, single-member districts are replaced by multiple-member districts, and seats are assigned in proportion to the percentage of votes received. Thus in a five-member district, a ticket that wins 20% of the vote is entitled to one seat, one that wins 40% gets two seats, and so on. With some variations, this is how legislators are elected in Germany, Sweden, Spain, Costa Rica, Ireland, and dozens of other countries, without need of gerrymandering to ensure pluralism.

Conventional wisdom holds that proportional representation could not be introduced in the United States because it requires voting for political parties instead of individuals. Though “party list” systems are indeed common in Europe, they represent but one form of proportional representation. An alternative form known as the single transferable vote (STV) is, like our existing political system, centered not on parties but on candidates.

Under STV, which is now used in Ireland, Malta, and Australia, voters rank candidates in order of preference. In our hypothetical five-member district, the candidates who obtain at least 20% of the first-choice votes are elected. The remaining seats are filled by consulting successive choices, subject to the same 20% threshold. This ensures proportional representation of significant minorities while preserving majority rule (since a ticket that receives 60% of the vote will win three of the five seats). It also avoids racial and ethnic discrimination.

Best of all, STV transfers more power to the citizen. There is no presumption that members of any given ethnic group will always want to vote on the basis of their ethnicity. Minorities of all types—political as well as ethnic and religious—are guaranteed the voice they are entitled to in the shaping of laws and policies that affect all alike.

STV would also free voters from the strictures of the two-party system. Since candidates would not need to win pluralities in order to be elected, third-party and independent candidacies would become viable. With 20% of the vote, a third party could elect something like one-fifth the House of Representatives.

Furthermore, since all votes under STV count toward the outcome, none are wasted. There is little pressure to vote for “lessers of evils,” and less incentive for the disaffected to not vote at all.

The fact that every vote affects the outcome equally under proportional representation has the additional advantage of eliminating the swing factor—that 5% or so of the vote that often tips a close election one way or the other. The heavy spending and negative advertising that have come to characterize U.S. campaigns are targeted at the small swing vote. By abolishing winner-take-all, proportional representation removes the 95% gain that can result from a 5% swing, greatly diluting the impact of money.
Significantly, there are no constitutional obstacles to electing the House of Representatives and most state legislatures by proportional representation. The Constitution only mandates that states maintain separate representation in Congress, in keeping with the postulates of federalism. Thus California, with 52 representatives, could divide itself into eight five-member and two six-member districts. North Carolina, with 12 seats, could set up two six-member districts. Louisiana, with seven seats, could form a single seven-member district. Should blacks, Latinos or Asians in any of these districts wish to elect members of their own ethnic groups, they would then need only 15% to 20% of the vote in each district to elect one representative (30% to 40% to elect two representatives). Hence the objective of achieving a Congress and state legislatures that look like America could be achieved without separating the country into racial enclaves.

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