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Perfecting the Voting Rights Act : protecting the suffrage of all citizens

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PERFECTING THE VOTING RIGHTS ACT: PROTECTING THE SUFFRAGE OF ALL CITIZENS

by

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Certificate of Approval

This is to certify that the accompanying thesis by Seth M. Dawson has been accepted in partial fulfillment of the requirements for graduation with Honors in Politics.

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May 10, 2012

"The further the limit of voting rights is extended, the stronger is the need felt to spread them still wider; for after each new concession the forces of democracy are strengthened, and its demands increase with its augmented power. The ambition of those left below the qualifying limit increases in proportion to the number of those above it. Finally the exception becomes the rule; concessions follow one another without interruption, and there is no halting place until universal suffrage has been attained."

- Alexis de Tocqueville

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Introduction

"The ultimate end of all freedom is the enjoyment of a right of free suffrage."
- "A Watchman," *Maryland Gazette*, 1776

Voting is the foundation of the representative democracy established by the Constitution of the United States, yet that same Constitution provides less explicit protection for the right to vote than it does for civil lawsuits valued at twenty dollars. As a republic, the government of the United States relies on the election of representatives to act on behalf of individual citizens. Without substantive guarantees for the right to vote, the people of the United States cannot properly function as citizens. Though suffrage is inherent to the structure of American government, the phrase "the right to vote" was absent from the Constitution until the Fourteenth Amendment was ratified in 1868. Even after this addition, the right to vote was not enforced through legislation until 1965, when Congress first passed the Voting Rights Act. This law remains the primary legal protection for the right to vote in the United States and has been left largely unchanged in the nearly 40 years since its original enactment.

In this thesis, I address the following question: Is the Voting Rights Act of 1965 (VRA) an appropriate protection for the right to vote given the importance of suffrage in America's republican form of government? I answer that while the Voting Rights Act has effectively protected the right of racial minorities to access the ballot box, it has failed to appropriately protect the value of each vote. In attempting to protect against the dilution of minority votes, the VRA has become a racist project which uses essentialist judgments about the homogenous nature of racial groups to perpetuate systems of representation that allow racial majorities to dominate elections.

This thesis makes two major contributions to the scholarly debate surrounding the

Voting Rights Act. First, I argue that one component of the VRA's protections is best understood as a racist project which perpetuates problematic electoral structures, essentializes racial identities, and does not allow for the republican conception of suffrage as a component of citizenship. Second, I combine a legal analysis of the Supreme Court's decision in *Bush* v. *Gore* with the scholarly literature regarding electoral structures to argue that Congress has the authority to establish systems of voting that are consistent with the demands of republicanism in local jurisdictions throughout the United States. Taken together, these additions to the scholarly debate allow me to argue that Congress has both the authority and the responsibility to abandon the racist section of the Voting Rights Act and replace it with a legislative mechanism through which local communities could establish cumulative electoral structures.

I begin by laying the groundwork for the role of the right to vote in a republic, arguing that it must be understood as a political function which effectively creates citizens as they act. From there, I demonstrate that this role has been ignored throughout American history, as the right to vote has been disconnected from citizenship. Next, I discuss the Supreme Court's voting rights jurisprudence in the 1960s, which transformed the suffrage from the privilege of particular groups into a fundamental component of citizenship which follows the principle of "one person, one vote." With this theoretical, historical, and legal background in place, I turn to my analysis of the Voting Rights Act of 1965. I argue that the Act fails to enforce the "one person, one vote" standard, and that its attempts to do so through racial groupings essentializes people of color and perpetuates the electoral structures which ensure their domination. I then address the Supreme Court's decision in *Bush* v. *Gore,* arguing that it provides a new Constitutional authority

that Congress could use to replace its problematic section. Finally, I argue that the appropriate protection for the "one person, one vote" principle is the use of cumulative voting systems. Such systems not only avoid the pitfalls of the Voting Rights Act, they also align more closely with the role of voting promoted by republicanism. I conclude with a brief discussion of the limitations of this thesis and potential avenues for future research.

The Role of Voting in a Republic

"The United States shall guarantee to every State in this Union a Republican Form of Government…"

- Article IV, Section 4 of the Constitution of the United States

"The essential assumption" of republican government "is that individuals can collaborate to elect a person to speak on their behalf" (Gerken 1678). This basic premise points to the fundamental difference between the role of suffrage in a republic and its purpose in a democracy. As James Madison described in Federalist No. 14, "in a democracy, the people meet and exercise the government in person; in a republic, they assemble and administer it by their representatives and agents." Thus, while the exercise of the franchise produces laws directly in a democracy, the purpose of republican suffrage is to elect the representatives who will later produce the laws. In a republic, the distance between suffrage and the production of law creates a contradiction between two foundational principles of American government. The first principle is that of self-rule: that citizens ought to determine "for themselves... the norms that are to govern" civil life and be subject to no authority but that which they have themselves established (Michelman 795). This principle is the foundation of democratic rule, and defends the notion "that the American people are free insomuch as they are governed by themselves

collectively" (794). The second principle is that of rule "by laws and not by men": that every citizen has certain rights which cannot be taken away by the whims of a majority (794). The first principle defends the notion "that the American people are free insomuch as they are governed by themselves collectively," (794) while the second is a declaration against the tyranny of the majority and a demand that citizens are "protect[ed] against abuse by arbitrary power" (795). In order to create a coherent account of the American republic, "there must be some sense in which we think of self-rule and law-rule... as amounting to the same thing" (795).

Legal republicanism suggests that these two principles can be reconciled by a political process in which laws and citizens are products of the same political act. The republican system of creating laws must therefore have a "people-making quality" which imbibes the "legislative product with a 'sense of validity' as 'our' law," giving it the "character" of being "binding upon all as self-given" (Michelman 796). Republican citizenship is the active "participation [of the individual] as an equal in public affairs" (796). This definition appeals to the Aristotelian idea of "man [as] a political animal" in claiming that "the self is understood as partially constituted by, or as coming to itself through, [political] engagement" (796). Private individuals are transformed into "members of a people" by becoming "public-regarding citizens" via appropriate political action (795). At the same time, all citizens must regard "both the [political] process and its law-like utterances" as legitimate, so that everyone will be subject to the law can agree that "those utterances, issuing from that process, warrant being promulgated as law" (816). The proper exercise of suffrage in a republic can produce citizens while simultaneously legitimizing the creations of a legislature.

The right to vote is so "deeply linked with [the notion of] equal citizenship" that the exercise of this right effectively creates citizens (Fishkin 1333). "The ballot" functions as "a certificate of full membership in society," in that it confers equal weight to the opinion of each citizen (1334). In a 1959 speech in Washington D.C., Dr. Martin Luther King, Jr. asserted that "the denial of the vote not only deprives the Negro of his constitutional rights – but what is even worse – it degrades him as a human being." Scholars such as Iris Young, Kenneth Karst and Ronald Dworkin argue that the right to vote is a "minimal condition of political equality," without which an individual cannot be properly called a citizen (1335). Thus it is the exercise of the franchise itself that constitutes an individual as a citizen. In exercising the rights of a citizen, a person in effect becomes a citizen. Fishkin argues that "when any individual… attempts to vote but is blocked from doing so, she is being excluded from the circle of full and equal citizens" (1337). This is a "substantive view" of suffrage as a fundamental right of citizenship, in that it "requires more than formal inclusion" (1337). A person's right to vote does not make them a citizen if they are prevented from actually casting a ballot. Thus it is the action of voting that is constitutive of citizens.

This same action is capable of legitimizing the products of the legislature. Legal republicanism argues that the legitimacy of laws relies directly upon "the diversity or 'plurality' of views that citizens bring to 'the debate of the commonwealth'" (Michelman 798). In other words, the creation of legitimate laws depends upon the existence of a diversity of views, authentically held within the polity, in conversation with one another. Michelman asserts that the proper "republican validation of a law," involves a "justificatory argument" which demonstrates that the law in question will be "actually

regarded by the people subject to it... as deserving acceptance by them" (803). The validity of law does not depend upon unanimous agreement with the law or "a final dissolution of difference" between all parties involved in debating the law (816). Nor does validity rely on participants "'abandoning' their commitments" to particular principles in order to recognize the law in question as good or bad (816). Rather, "validation [can occur] when participants...come to 'hold the same commitments in a new way'" (816). Citizens have the power to validate normative beliefs as law by engaging in public debate, discussion and persuasion. However, in a republic, it is not enough for this dialogical process the take place among the citizens; it must also occur in the legislature itself, as laws are created. In other words, the laws given by the legislature are validated by the "diversity or 'plurality' of views that [representatives] bring to 'the debate of the commonwealth'" (798). Thus, republican suffrage ought to give citizens in the minority of any issue a reasonable opportunity to elect representatives who will give that perspective voice in the legislative process.

In order to reconcile rule by the people with rule by laws, suffrage must be produce citizens while validating public law through the election of representatives that voice the concerns of more than just the majority. In the following section, I will demonstrate that this conception of suffrage has been lacking in the United States for most of its history. Though it establishes a republic, the Constitution of the United States does not establish protections for the political act on which it relies.

The Disconnect Between Citizenship and Suffrage

"It cannot for a moment be doubted that if [the Constitution] had been intended to make all citizens of the United States voters, the framers of the Constitution would not have left it to implication. So important a change in the condition of citizenship… would have been expressly declared."

– Chief Justice Morrison Waite, *Minor* v. *Happersett*, 88 U.S. 162 (1875)

The Constitution of the United States contains no affirmative right to vote. This glaring omission has been the root cause of major political movements throughout American history, from the fight for women's suffrage in the 19th and 20th centuries to the Civil Rights movement of the 1960s and beyond. Such movements have produced legislation and constitutional amendments designed to expand the franchise, and while such efforts have limited discrimination based on race, sex, age and socio-economic status, none has guaranteed the right to vote.

For nearly 200 years, the courts of the United States have enforced the distinction between citizenship and the franchise. In 1865, the Maryland Court of Appeals articulated this position most clearly in ruling that the State of Maryland has the authority to disenfranchise citizens by requiring voters to pass certain tests, including a loyalty oath, because "citizenship and suffrage are by no means inseparable" (*Anderson* v. *Baker*, 23 Md. 531 (1865)). That court's decision, which the Supreme Court declined to review, explicitly established that "the right of suffrage… may be modified or withdrawn by the sovereign authority which conferred it" (*Anderson*). Moreover, because citizenship did not automatically confer suffrage, the court ruled that such modification or withdrawal does not "inflict any punishment on those who are disqualified" from the franchise (*Anderson*). In effect, this decision set the precedent that suffrage is so disconnected from citizenship that the denial of suffrage does not dilute the citizenship of an individual in

any way.

Ten years later, Virginia Minor brought a lawsuit against the State of Missouri that ended with a similar result. Minor claimed that the Fourteenth Amendment guaranteed her access to all of the components of citizenship, and that Missouri had violated this guarantee by refusing to allow her to register to vote. The Missouri Supreme Court ruled against Minor, who then appealed to the Supreme Court of the United States. Minor's argument had three major components. First, Minor asserted that her birth in the United States guaranteed her citizenship under the Fourteenth Amendment, which states that "all persons born…in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Second, Minor argued that as a citizen, she was entitled to the full privileges associated with citizenship. This claim also relies on the Fourteenth Amendment, which guarantees that "no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States." Finally, Minor made the republican argument that voting is the definitive privilege of citizenship. Therefore, Minor claimed, the State of Missouri had violated the Constitution by denying her suffrage.

The Court validated the first two components of Minor's case but ultimately rejected her republican claim that access to the franchise was an essential component of citizenship. In a unanimous decision, the Court declared that the denial of suffrage does not "abridge the privileges or immunities of citizens of the United States" (*Minor* v. *Happersett*, 88 U.S. 162 (1875)). The decision denied any legal connection between citizenship and access to the franchise, asserting that "the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage" (*Minor*). The Court noted that

the second section of the Fourteenth Amendment penalizes any state whose laws deny or abridge "the right to vote… to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States," and argues that this section "clearly recognizes the right, and seems to anticipate the exercise of the right, on the part of the States to restrict the right of suffrage to the male inhabitants" (*Minor*). Therefore, because the 14th Amendment seemingly recognizes the authority of State governments to restrict the franchise, the Court ruled that voting is not an inalienable right or privilege of citizenship.

In order to reach this ruling, the Court was forced "to define the political meaning of 'citizen' in such a way that did not entail a right to vote," doing so by "defin[ing] citizenship in terms of the 'reciprocal obligations' of 'allegiance and protection' between the individual and the state" (Fishkin 1340). Legal scholars describe this definition as "a glaring and somewhat embarrassing flaw" in American jurisprudence, because it is "just as applicable to 'subjects' as it [is] to 'citizens'" (1340). According to the Court, "'subject,' 'inhabitant,' and 'citizen' were all just different names for 'membership' in a nation," (*Minor*). This equation of subject and citizen was explicitly rejected by the Court in previous cases[1], but the Justices in *Minor* ruled that the term "citizen" is simply "more commonly employed" and is "better suited to the description of one living under a republican government," even though this "description" yields no substantive rights associated with republican government (*Minor*). In effect, the Court ruled that citizens "inhabit the kind of place where some of the people have the right to participate in the

[1] See *Chisholm* v. *Georgia*, 2 U.S. 419 (1793), in which the Court ruled that the people of the United States are citizens because "the sovereignty [of the nation] rests with the people." This sovereignty bestows individuals with a "civil authority" which mere subjects lack. Though the core holding of *Chisholm* was overturned by the Eleventh Amendment, the legal definition of an American "citizen" as distinct from a "subject" held until the Court's ruling in *Minor*.

offices involving deliberation and decision – even if [the citizen herself has] no such right" (Fishkin 1341). This precedent – and the resulting definition of citizenship – remained the law of the land for nearly a century.

With the Supreme Court validating disenfranchisement through legislation, efforts to deny suffrage to various groups continued well into the 20th Century. Though the Fifteenth Amendment asserts that "the right of citizens of the United States to vote shall not be denied or abridged… on account of race, color, or previous condition of servitude," this formal guarantee provided little substantive protection for the right to vote. A "sustained, nationwide contraction of suffrage rights" directly followed the abolition of slavery and the passage of the Fourteenth and Fifteenth Amendments (Keyssar 137). As Keyssar notes in his canonical text on the history of suffrage in the United States, "voting was not for everyone":

> "A man could be kept from the polls because he was an alien, a pauper, a lumberman, an anarchist, did not pay taxes or own property, could not read or write, had moved from one state to another in the past year, had recently moved from one neighborhood to another, did not possess his naturalization papers, was unable to register on the third or fourth Tuesday before an election, could not provide that he had cancelled a prior registration, been convicted of a felony, or been born in China or on an Indian reservation" (136).

Keyssar ascribes these and other limitations on the franchise to the attempts of socio-economic elites to retain control of the government in the aftermath of "the abolition of slavery [and] the beginnings of industrialization," both of which contributed to the generation of "class conflict on a scale that the nation had never known" (137). This economic turmoil, combined with "racial hostility and prejudice," created a political climate in which minority groups were portrayed as "both threatening and inferior," and therefore "legitimate targets of political discrimination" (137). Poll taxes, literacy tests and other barriers to voting were strategically erected to deny citizens any substantive

opportunity to exercise their formal rights to the franchise. As a result, "millions of people – most of them working class and poor – were deprived of the right to vote," and "the outcomes of innumerable political contexts were altered" (Keyssar 138). Though the franchise had been formally expanded, the American political process remained profoundly undemocratic.

In 1920, the United States made its first substantive move toward universal suffrage with the ratification of the Nineteenth Amendment. By "nearly doubling the size of the nation's electorate," the Amendment grew the polity in a way that could not be restricted by the same economically-focused voter suppression laws passed in the decades following the Fifteenth Amendment (Keyssar 178). Consequently, such restrictive efforts "subsided in the 1920s… [and] the broad contours of suffrage law remained remarkably stable" for the next several decades (178). This stability, of course, ensured that while the franchise was not further restricted, it was not expanded either. After forty years of stasis, the Twenty-Fourth Amendment was ratified in order to abolish poll taxes in federal elections. Like the Fifteenth Amendment, the Twenty-fourth expanded the formal size of the electorate but did little to expand the substantive rights of those effectively disenfranchised by state laws, which remained free to suppress suffrage through many other means. Suffrage remained the exclusive privilege of a particular subset of citizens protected by state law. Voting was still not for citizens.

In the 1960s, that began to change. A combination of Supreme Court decisions fundamentally reinvented the Constitutional underpinnings of the franchise, eliminating the vast majority of formal barriers to voting and establishing an expansive Congressional authority to protect the suffrage of all citizens. By recognizing the fundamental nature of

the franchise, the Court "transformed the right to vote from a formal, theoretical guarantee into a substantive entitlement of citizenship" (Fishkin 1322).

Remaking the Right to Vote

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right to suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

– Chief Justice Earl Warren, *Reynolds* v. *Sims*, 377 U.S. 533 (1964)

The phrase "the right to vote" appears in the Constitution for the first time in the Fourteenth Amendment. When confronted with barriers to the franchise, the Supreme Court has generally eschewed the relatively narrow protections offered by the Suffrage Amendments. In their place, the Court has used the Equal Protection Clause of the Fourteenth Amendment, which provides that "no State shall… deny to any person within its jurisdiction the equal protection of the laws." By locating the right to vote within a generally applicable provision of a separate Amendment, the Court has simultaneously expanded Congressional authority to defend the franchise and reinvented suffrage as a fundamental right of citizenship.

In *Reynolds v. Sims*, 377 U.S. 533 (1964), the Supreme Court first articulated the fundamental nature of suffrage. Writing for the eight member majority, Chief Justice Warren argued that "the right to exercise the franchise in a free and unimpaired manner" is fundamental because it "is preservative of other basic civil and political rights." The Court ruled that in order to satisfy the conditions of this clause, each the votes of each citizen must be valued at the same rate. In other words, the right to vote involves the ability to cast a vote which is not diluted or diminished by electoral structures and bloc voting. Warren explicitly argued that any "representative institution that departed from

equally weighted votes... would be unconstitutional." This principle – known as "one person, one vote" – has been the basis of the Court's voting rights jurisprudence ever since.

Two years later, in *Harper v. Virginia Board of Elections,* 383 U.S. 663 (1966), through the same principle of incorporation used to expand First Amendment protections against the actions of state governments, the Court extended the Twenty-Fourth Amendment's prohibition of poll taxes to state and local elections. The Court relied on the same Equal Protection argument it used in *Reynolds* to claim that the use of poll taxes in local elections was a violation of the Fourteenth Amendment in that it disregarded the principle of "one person, one vote." In *Avery* v. *Midland County*, 390 U.S. 474 (1968), the Court extended the "one person, one vote" precedent by ruling that locally elect representative bodies are subject to the same Equal Protection standard that governs representation at the state and federal level. In both of these cases, the Equal Protection Clause was used to circumvent the traditional federalist protections granted to state authority and allow the national government to regulate the electoral laws of even local elections.

As the Court has moved away from the traditional group-based protections of suffrage, it has changed the contours of the franchise itself. Recall that laws – and even Constitutional amendments – have defended suffrage according to membership in particular subgroups of citizens, and not according to citizenship itself. In transitioning toward a franchised defined by citizenship, the Court has moved away from this group-based conception of the right to vote. The right to vote is the right of an individual, and not of a group. However, since the Court's decision in *Reynolds,* the right of suffrage has

involved the ability of an individual to cast a vote that is not diluted by the combination of electoral structure and systematic bloc voting of a majority group. The phenomenon of vote dilution "does not fit easily with a conventional view of individual rights," because the only way to determine "whether an *individual* has been harmed" by dilution is "to consider the relative treatment of *groups*" (Gerken 1666; Fishkin 1302). Thus, though the Court has explicitly rejected the notion that "the coordinate right to an undiluted vote… belongs to the minority as a group and not to its individual members," dilution must be measured at the group level (*Shaw* v. *Reno*, 517 U.S. 917 (1993)). The ability of an individual to cast an undiluted vote "hinges on one's ability to aggregate [her] vote with those of like-minded voters" (Gerken 1677). "Dilution cannot be established simply by examining the treatment of an individual voter" because such an examination "will reveal only whether that person had an equal opportunity to *cast* a vote," and not "whether she had an equal opportunity to *aggregate* her vote" (1684). When that aggregation is blocked by inequitably drawn districts, the individual's ability to cast an undiluted vote is compromised.

The right to cast an undiluted vote is therefore an "aggregate right" in that "the individual injury at issue cannot be proved without reference to the status of the group as a whole" (Gerken 1667). Importantly, the "group-based characteristics" of an "aggregate right" are the characteristics of "a collection of individuals," and not of "an entity that exists separate and apart from its members" (1682). That said, an aggregate harm is "unindividuated among members of the group" in that "no group member is more or less injured than any other group member (1681). In other words, the right of each individual member "rises and falls with the treatment of the group" as a whole (1681). As a result,

"the baseline for measuring fairness" in claims of vote dilution is established by examining "the relative treatment of groups" (1684). The Voting Rights Act of 1965 attempts to do just that by protecting both the right to cast a ballot and the right of an individual to aggregate her vote with likeminded voters. However, the VRA fails to protect this second aspect of suffrage. In the next section, I will show that its attempts to do so have resulted in the essentialization of people of color and the perpetuation of electoral structures which produce racial domination.

Critiquing the Voting Rights Act as a Racial Project

"The vote is the most powerful instrument ever devised by man for breaking down injustice and destroying the terrible walls which imprison men because they are different from other men."

- President Lyndon B. Johnson, at the signing of the Voting Rights Act of 1965

The Voting Rights Act of 1965 (VRA) was created to enforce the Fifteenth Amendment's prohibition against the denial of suffrage on the basis of race, and remains the centerpiece of Congressional efforts to guarantee access to the franchise. Mirroring the language of the Amendment it is designed to enforce, the VRA prohibits states from establishing any "voting qualification or prerequisite to voting, or standard, practice, or procedure... to deny or abridge the right of any citizen of the United States to vote on account of race or color." Through this language, the VRA gives people of color access to the franchise by protecting both the formal right to cast a ballot and the substantive right to cast an undiluted vote. The Act has two central enforcement provisions: Section 2 and Section 5. Section 2 contains the nationwide prohibition on discriminatory practices quoted above, and has effectively abolished the majority of state-based voter suppression legislation. Section 5 establishes more stringent guidelines for electoral changes in states

and regions with a history of discriminatory voting practices.[2] Originally designed as a temporary measure, the VRA has been renewed and expanded by Congress on four separate occasions.[3] Overall, the Voting Rights Act has been one of the most popular and successful pieces of legislation in American history.

Race and Racial Projects

Any substantive discussion of the Voting Rights Act must begin with an understanding of race. Importantly, race is not an inherent biological fact, determined by skin color or any other physical attribute (Omi and Winant 65). Rather, race is a complex, structural, socially defined phenomenon that "signifies and symbolizes social conflicts and interests by referring to different types of human bodies" (55). In other words, race references the human body but does not originate in the body. According to racial theorists Omi and Winant, the phenomenon we call race is the product "of the interaction of racial projects on a society-wide level" (60). Each racial project has two main components. First, the project is an "interpretation, representation, or explanation of racial dynamics" (56). Second, it is "an effort to reorganize and redistribute resources along particular racial lines" according to the definition established by the first part (56). In other words, racial projects "connect what race *means* in a particular discursive

[2] Currently, Section 5 applies to Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia, and certain jurisdictions within California, Florida, Michigan, New Hampshire, New York, North Carolina, and South Dakota.

[3] In 1970, Congress simply renewed the Act for 5 years after finding that racially discriminatory practices remained a problem, particularly in local jurisdictions. In 1975, Congress extended the VRA for another 7 years and expanded it to include explicit protections for language minorities. Under these new provisions, jurisdictions can be required to provide bilingual registration and voting materials, including ballots and voter information pamphlets. In 1982, Congress made the general provisions of Section 2 permanent and extended all other sections for 25 years. In addition, Congress amended Section 2 to allow plaintiffs to establish violations of that Section without proving that any such violations were adopted with discriminatory intent. This amendment was prompted by the Supreme Court's decision in Mobile v. Bolden, 446 U.S. 55 (1980), which found that the original language of the Voting Rights Act did require a demonstration of discriminatory effect in order to establish a violation of Section 2. Finally, Congress renewed the Voting Rights Act in 2006 for another 25 years, with no major substantive changes.

practice and the ways in which both social structures and everyday experiences are racially *organized*, based upon that meaning" (56).

Each individual project is a single strand in "a vast web of racial projects" that all compete to define race according to particular social and historical circumstances (60). No project determines the meaning or function of race on its own, but each contributes to the formation of race. Racial projects can operate "at the level of everyday life," often when we "unconsciously… notice race" and use it to "provide clues about *who* a person is" (59, emphasis in original). Other, more macro-level projects – such as "racial policy-making, state activity and collective action" – can have significant impacts on the ultimate construction of race even when those projects do not affect daily life (58). The Voting Rights Act fits within the latter category; it is a broad, racially-based political project that has substantial implications for the rights of racial minorities. "Society is suffused" with these projects, "large and small," and everyone is "subjugated" by the sum of racial expectations that these projects establish (60). Racial projects are not problematic in and of themselves, but do have the potential to produce problematic social structures. Importantly, when a racial project "*creates or reproduces structures of domination based on essentialist categories of race,*" it becomes a "*racist"* project (71, emphasis in original). Such projects skew the "web" of racial projects and establish discrimination as a "structural feature of… society" (69).

Omi and Winant argue that race in the United States is "the product of centuries of systematic exclusion, exploitation, and disregard of racially defined minorities" (69). As a result, race in the United States "exist[s] in a definite historical context, having descended from previous conflicts" (58). These conflicts, from slavery to the War on

Drugs and beyond, can be located "within a fluid and contested history of racially based social structures and discourses" that inform the current construction of race in the United States (71). Because American law has "treated people in very different ways according to their race," the United States "cannot suddenly declare itself 'color-blind' without in fact perpetuating the same type of differential, racist treatment" that has plagued the nation's history (57). In order to counteract the discriminatory structures that have been constructed within American society, legislation ought to provide explicit protections for racially defined minorities. With its categorical defense of minority suffrage, the Voting Rights Act seems like an appropriate racial project to combat the history of minority disenfranchisement. Indeed, the Act's immediate effects were indisputably positive. More than a million new voters of color had registered in the South within a few years after Congress passed the Act, "bringing African-American registration to a record 62 percent" (Keyssar 212). With such obvious success, the legitimacy of the VRA as a racial project has never been called into question.

In the following section, I will argue that despite the success of the VRA's racially-based protection in increasing access to the ballot box, the Act's racial remedy for vote dilution is not an appropriate solution to the history of minority underrepresentation. I will show that this component of the Voting Rights Act is, by Omi and Winant's definition, a racist project.

Understanding the Voting Rights Act as a Racist Project

Section 2 of the Voting Rights Act offers protections against efforts to "deny or abridge the right to vote on account of race." The right to vote can be denied by literacy tests, poll taxes, and any number of other barriers to the ballot box. As noted above,

Section 2 quickly eliminated a majority of these barriers to the franchise. The abridgement of the right to vote is more complicated, and involves the phenomenon known as vote dilution. Dilution which is the "process whereby election laws or practices, either singly or in concert, combine with systematic bloc voting among an identifiable group to diminish the voting strength of at least one other group" (Davidson et al. 22). Essentially, the votes of a minority group can be diluted when a majority group consistently votes as a single bloc.

The Voting Rights Act is concerned only with racially motivated vote dilution. This specific type of dilution is produced by the combination of "racially polarized voting" – in which racial groups vote as blocs – and the use of certain types of elections in selecting the members of representative bodies (Davidson et al. 22). Racially polarized voting is particularly dangerous in multi-member systems – in which every voter is able to cast a ballot for every seat being contested – because it creates the possibility that a slim racial bloc majority could decide the outcome of every election and effectively deny all minority representation. Numerous studies have shown that multi-member (or "at-large") winner-take-all elections tend to produce racially motivated vote dilution more often than any other common electoral system (Davidson and Korbel 1981; Leal et al. 2004; Meier et al. 2005; Polinard et al. 1994). As Davidson and Korbel explain, "racial vote dilution takes place when a majority of voters, by bloc voting for its candidates in a series of elections, systematically prevents an ethnic minority from electing most or all of its preferred candidates" (Davidson and Korbel 983).

When racially polarized voting is discovered within at-large systems, the Voting Rights Act provides a legal mechanism through which a jurisdiction can switch to the

more equitable single-member district system so that the votes of a minority group are less diluted. This mechanism can be triggered through successful litigation by private citizens or through an investigation by the Department of Justice. In either scenario, the appropriate remedy is determined by a federal judge. Often, the remedy is simply an order that the jurisdiction create a single-member electoral system. However, sometimes the remedy requires a more specific set of instructions. If single-member districts are drawn in such a way as to leave a substantial racial minority without an equal chance to elect a proportionate number of representatives, the judge might order the creation of majority-minority districts in particular areas. This remedy is meant "to provide disadvantaged racial groups the equal opportunity" to elect candidates of their choosing by ensuring that certain districts are controlled by voters of color (Guinier 135). In other words, the VRA's remedy for vote dilution is to guarantee that the racial minority is able to elect at least one candidate of its choice. While this remedy seems acceptable on the surface, I argue that it is actually a racist project.

Recall Omi and Winant's two-pronged test to determine if *racial* projects can be considered *racist*. First, the project must "create" or "reproduce… structures of domination" (71). Second, these "structures" must be "based on essentialist categories of race" (71). The remedy that the Voting Rights Act provides in cases of vote dilution essentializes the identities of people of color in order to reproduce the winner-take-all electoral structures that allow the majority to dominate local elections. I will first discuss the essentializing nature of the remedy, and then turn to its structural issues.

Essentializing Race by Ignoring Intersectionality

Though well-intentioned, the VRA's remedy for vote dilution essentializes people

of color by using their "race as a proxy for other interests" (Guinier 138). The Act rests on the assumption that voters of the same racial group share the same political interests, and so it operates as if the election of a single member of a racial group is sufficient to represent the interests of every individual within that group. However, "racial groups are not monolithic, nor are they necessarily cohesive" (Guinier 142). Any given group, racial or not, is likely to have basic political differences between its members. People of color are Republicans as well as Democrats, anarchists as well as libertarians, socialist as well as capitalist. Communities of color are not homogenous, but the Voting Rights Act treats them as though they are. The election of one person of color should not be understood to represent the political interests of every person of color.

Beyond the basic political differences likely to be present in any population, communities of color are made up of individuals whose racial identities are constructed in part by their gender, sexuality, and other identities. Kimberle Crenshaw describes the "political intersectionality" that people face when they identify as members of "at least two subordinated" and historically marginalized groups (Crenshaw 1251). Women of color, for example, identify as members of two distinct minority groups "that frequently pursue conflicting political agendas" (1252). However, "women of color experience racism in ways not always the same as those experienced by men of color and sexism in ways not always parallel to experiences of white women" (1252). The identity – and the political interests – of women of color is more than the sum of their identity as women and their identity as people of color. Each of these groups "often implicitly denies the validity of the other" by ignoring the mechanisms of subordination that perpetuate racism or sexism respectively (1252). So while women of color may identify as both women and

as people of color, "the resistance strategies of feminism will often replicate and reinforce the subordination of people of color," and the strategies of anti-racism movements "will frequently reproduce the subordination of women" (1252). When feminism ignores the way women of color experience the patriarchy, it fails to completely articulate the dimensions of sexism. In the same way, when anti-racist movements ignore the particular way in which women experience racism, they fail to articulate "the full dimensions of racism" (1252). As a result, when women of color are forced "to split [their] political energies between two sometimes opposing groups," important aspects of their identity are essentialized and ignored (1252). Crenshaw argues that in order to develop "a political discourse that more fully empowers women of color," both feminist and anti-racist movements must recognize the intersecting the racial and gendered "dimension[s] of subordination" so that each complicates the understanding of the other (1252). Crenshaw argues that "an awareness of intersectionality" is necessary in order to avoid essentialization when "constructing group politics" (1299).

Unfortunately, the Voting Rights Act ignores intersectionality while constructing a politics based on racial groups. Because its provisions only recognize the racial aspect of people's identities, the VRA erases and "subsumes [the] gender, age, and class differences" that inform the identities of many people of color (Guinier 141). By assuming the homogeneity of communities of color, the VRA fails to recognize the complexities of intersectional identities and essentializes the political interests of all people of color. It does not provide for the possibility that women of color or queer people of color experience their racial identities differently than men of color. As a result, the remedy the VRA provides for vote dilution is unlikely to account for the particular

political interests of women of color. Individuals who live at the intersections of race, gender, sexuality and class are unlikely to be adequately represented by the elections of one person of color who is unlikely to share their particular intersectional identities. The Voting Rights Act essentializes the political interesectionality within communities of color by only acknowledging the racial dimension of identity when creating single-member districts.

Winner-Take-All Elections as Structural Domination

Though the VRA's remedy for vote dilution seems to provide a change in electoral structure, this change is not capable of fully eliminating vote dilution. The remedy involves the transition from an at-large election to single member districts, but both of these electoral structures are based on the principle of winner-take-all. These elections "award disproportionate power to electoral majorities" by ensuring that a bloc of majority voters can effectively determine the outcome of nearly every election (Guinier 135). The combination of winner-take-all systems and single-member districts "forces minorities to concentrate their strength within a few electoral districts," isolating them from "potential legislative allies… who are not geographically concentrated" (Guinier 135). In addition, the concentration of minority voters in a few districts results in the election of representatives who are not responsive to the concerns of that minority because they can never be held accountable by minority voters. Moreover, "district representation minimizes the connection between voting and representation" by forcing voters into arbitrary geographic units which may prevent them from even voting for the candidate of their choice (Guinier 136). The use of single-member districts perpetuates the winner-take-all structure that allows racial majorities to dominate most elections, and thus this

remedy fails to provide substantive change.

In sum, the VRA's remedy for vote dilution can be considered a racist project because it essentializes race in order to construct the winner-take-all electoral structures that allow racial majorities to dominate most elections. Moreover, the single-member district structure of the VRA remedy requires that "the minority group [be] sufficiently large and geographically compact to constitute a majority" in such a district (*Thornburg* v. *Gingles*, 478 U.S. 30 (1986)). In other words, "single-member districts take advantage of segregated housing patterns to use geography as a proxy for racial" groupings (Guinier 138). Geographical compactness is essentially a requirement for racial segregation; the remedy of majority-minority single-member districts can only function if large segments of the minority population all live in the same area. Segregation is another structure that has been used for race-based domination in the United States, and the vote dilution remedy provided by the Voting Rights Act effectively requires that this structure be reproduced. The forced perpetuation of racial segregation is an undeniably racist aspect of the Voting Rights Act. This racist remedy ought to be replaced by a mechanism that allows jurisdictions to move away from winner-take-all elections and toward alternative voting methods. In the following section, I argue that the Supreme Court's decision in *Bush* v. *Gore* provides the constitutional authority necessary to pass such legislation, and I suggest cumulative voting as an appropriate remedy in cases of vote dilution.

Toward the Equal Protection of the Franchise

"The right to vote is at the very foundation of our American system.... There must be no question whatsoever about the right of each eligible American, each eligible citizen to participate in our elective process."

- President Gerald Ford, at the signing of the 1975 expansion of the Voting Rights Act

In *Bush v. Gore*, 531 U.S. 98 (2000), the Supreme Court revolutionized its voting rights jurisprudence by striking down Florida's recount process as a violation of the Equal Protection Clause on its face. In a 7-2 per curium opinion, the Court expanded on its previous voting rights the decisions to rule that specific electoral mechanisms can violate the principle of "one person, one vote" even, "without evidence that an identifiable group of voters had been accorded less favorable treatment than another" (Tokaji 2004). Though the opinion stated that "the question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections," it did rule that the specific process set by the State of Florida was in violation of the Equal Protection Clause. Bass (2004) points out that despite this disclaimer, "lower courts interpreting Bush v. Gore" have begun "to apply to the claims of unequally counted votes within local municipalities."

The precedent set by *Bush* – in conjunction with the Court's reasoning in *Reynolds, Harper,* and *Avery* – provides an entirely new legal framework in which to consider the extent of Congressional authority to protect access to the franchise. In an analysis of the 2006 re-authorization of the Voting Rights Act, Tokaji (2006) asserts that the Equal Protection reasoning put forward by the Supreme Court in *Bush* fills a gap left in the protections offered by the Voting Rights Act. Under *Bush*, Congress essentially has the authority to regulate state and local elections for the purpose of ensuring that every individual vote is counted in an equitable manner (2006). Extending this same line of

reasoning, Post (2005) argues that *Bush* provides a broad Congressional power to regulate local elections in order to "ensure that every voter has the same likelihood of casting a meaningful vote." Post contends that the precedent set by *Bush* v. *Gore* essentially classifies any "inconsistency" in the administration of an election as a "violat[ion of] the Equal Protection Clause because it treats citizens unequally, oftentimes negatively impacting minorities and less affluent citizens." Such inconsistencies can arise from any electoral mechanisms which have the effect of diluting or discounting any votes, whether or not such effects are intentional. At the same time, Post argues that the "one person, one vote" standard established in *Reynolds* and expanded through *Bush* necessarily limits the authority of state governments to adopt electoral mechanisms which have the effect of decreasing the value of any vote or group of votes. Thus, *Bush* grants Congress the authority to establish a national regulatory standard for the structure of local elections in order to protect the right of all citizens to cast an undiluted vote, even though this regulatory authority has traditionally been the realm of state governments. The fact that Congress has not yet exercised its authority to regulate state and local elections is not proof that this authority does not exist. Congress can choose whether or not to create legislative mechanisms to enforce the suffrage protections the Court has established in the Equal Protection Clause of the Fourteenth Amendment through its decision in *Bush*.

Post and Tokaji point to the likely establishment of "inter-jurisdictional equality," – which would require that votes in different districts be counted in precisely the same manner in order to satisfy the Equal Protection standard set in *Bush* – as potentially the most significant consequence of this new Congressional authority (Tokaji 2005, Post 2005). Such a broad equality standard can be drawn from the fact that they Court found a

Fourteenth Amendment violation without any actual evidence of discriminatory effect. For the first time, an electoral mechanism was deemed inequitable in and of itself. This precedent, scholars argue, can and will be used to require disparate jurisdictions to adopt the certain electoral mechanisms and structures which have been determined to treat votes and voters equitably. Since the Court has begun to "recognize equal protection violations whenever a State fails to treat all of its citizens in the same manner during the voting process" and Congress has the authority to enforce the Fourteenth Amendment through appropriate legislation, the Court's ruling in *Bush* has effectively created an expansive Congressional authority to protect the right of suffrage against any state law which has the potential to deny or dilute the right to vote (Post 2005).

By relocating the Constitutional protections of suffrage within a generally applicable provision, the Supreme Court has disassociated the franchise from particular groups and declared that it is a fundamental right of citizenship. It is important to note that the Court's decision in *Bush* moves electoral jurisprudence away from the traditional model of group-based representation and toward the protection of an individual right to participate equally in the political process. In *White* v. *Regester*, 412 U.S. 755 (1973), the Supreme Court ruled that two "multi-member" (or "at-large") electoral districts in Texas "invidiously excluded Mexican-Americans [and African-Americans] from effective participation in political life, specifically in the election of representatives." This decision was based on the judgment that the "characteristics of the Texas electoral system, neither in themselves improper nor invidious, enhanced the opportunity for racial discrimination." The Court's assertion that an "enhanced... opportunity for racial discrimination" was sufficient to violate the Equal Protection Clause parallels its claim in

Bush that the Florida "recount process, in its features here described, is inconsistent with the minimum procedures necessary to protect the fundamental right of each voter." In both cases, the Court found that the electoral practices in question violated the Equal Protection Clause on their face – in their "characteristics" and "features" – even before there was a demonstrated discriminatory effect. The major difference between the two decisions, as alluded to above, is that the decision in *White* focuses on the electoral structure's effect on the representation of a particular racial group while *Bush* is based upon the recount's effect on the individual's fundamental right to political participation.

In this respect, *Bush* v. *Gore* is consistent with the Supreme Court's recent aversion to group-based rights. This trend began in *Miller* v. *Johnson*, 515 U.S. 900 (1995), in which the Court ruled that the State of Georgia's redistricting plan violated the Equal Protection Clause because it used race as the "predominant, overriding factor" in the creation of electoral districts. Essentially, Georgia was attempting to create majority-minority districts, like those provided as remedies to vote dilution under the Voting Rights Act. The Court determined that the scheme Georgia had decided upon went too far to protect the suffrage of a particular group, to the point where violated the Equal Protection rights of citizens not included in that group by creating too many majority-minority districts. The Constitution, as currently read by the Supreme Court, provides a defense for the suffrage of all citizens.

In rearticulating the right to vote as fundamental under the Equal Protection Clause, the Supreme Court has granted Congress broad powers to enforce that right through a legislative mechanism. In passing a new remedy for vote dilution under this Equal Protection authority, Congress could affirm the fundamental nature of the franchise

and defend it as the inherent right of every citizen. In the next section, I will show that cumulative voting offers the possibility of preventing vote dilution while avoiding the racist issues that plague the dilution remedy of the Voting Rights Act. Moreover, I argue that cumulative voting aligns with the republican ideal of voting as a citizen-creating act.

Cumulative Voting as the Republican Remedy for Vote Dilution

"Voting is the most precious right of every citizen, and we have a moral obligation to ensure the integrity of our voting process."

- Secretary of State Hillary Clinton, then Senator Clinton

Recall that the current remedy for vote dilution is the creation of single-member districts, drawn with the specific intention of allowing voters to aggregate their ballots along racial lines. The drawing of such districts restricts the ability of individuals to aggregate their votes along any lines other than race, regardless of their political priorities. Thus, it seems that a return to multi-member districts might be necessary to allow for freedom of aggregation. However, the winner-take-all structure of current multi-member elections is the source of much of the vote dilution that the VRA was originally created to prevent. The right to aggregate votes freely seems to require the use of multi-member districts in a new manner. Several legal scholars suggest cumulative voting as a potential alternative to winner-take-all elections in multi-member districts (Gerken, Guinier, Fishkin, etc.). This system already has a relatively well-established history in the United States, having improved minority representation in various local jurisdictions in Alabama, Illinois, New Mexico, South Dakota, and Texas for more than 100 years (Barber 150).

The use of cumulative voting will lessen the electoral domination made possible by the structure of winner-take-all elections. Cumulative voting schemes allow

candidates to run for several seats generally rather than for a specific seat, and "each voter is given the same number of votes as open seats, and the voter may plump or cumulate her votes to reflect the intensity of her preferences" (Guinier 149). In a city council election in which five seats were available, citizens could cast one vote for five different candidates, five votes for a single candidate, or any combination in between. The five candidates with the highest number of votes would be elected. Replacing winner-take-all systems with cumulative voting will effectively remove the "host of electoral rules [that have] led to the aggregation of individual votes in such a way as to make it extremely difficult for members of long-oppressed minority groups to elect candidates whom they preferred" (Keyssar 245). In the absence of winner-take-all structures, voters will be able to aggregate their votes more freely by casting multiple votes for the same candidate.

Cumulative elections "allow individuals to coalesce along whatever lines they wish without requiring the state to involve itself in those groupings" (Gerken 1730). As a result, "politically cohesive minorities are assured representation if they vote strategically," with all members casting their aggregated votes for the same candidate(s) (Guinier 149). Cumulative systems would allow for the free aggregation of votes seemingly required by the Court's reading of the Equal Protection Clause, and encourage the election of the representatives preferred by minority groups by allowing the individuals within those groups to aggregate their votes accordingly. Importantly, this free aggregation of votes means that cumulative voting "can circumvent the hazards of essentialism (e.g., presuming that all blacks have identical interests)" (Keyssar 245). Because voters are able to "form voluntary affiliative districts," there is no need for the

"formal recognition for [a] group as one which deserves special treatment" which leads to the essentialization of the members of that group (Guinier 140). By allowing individuals to cast their votes "in ways that permit automatic, self-defined apportionment based on shifting political or cultural affiliation and interests," cumulative systems avoid the essentializing nature of racially-based winner-take-all systems (140).

Moreover, by providing cumulative elections as the appropriate remedy in cases of vote dilution, Congress could enforce the conception of suffrage demanded by republicanism. As noted above, cumulative voting allows individual voters to "build coalitions across such categorical lines to form truly voluntary constituencies" (Barber 145). Beyond avoiding the essentializing groupings inherent in single-member districts, cumulative systems give individual citizens more power to ensure that candidates with particular views are elected to representative bodies. This improves the "diversity… of views that [representatives] bring to 'the debate of the commonwealth'" (Michelman 798). Republicanism demands that this diversity be created through the actions of individual citizens, and cumulative voting provides an electoral mechanism through which citizens could aggregate their votes along any lines they like. People of color could certainly aggregate their votes to elect particular candidates, but so could women of color, queer people of color, queer women of color, or any other conceivable group of sufficient size.

The cumulative remedy could either function through the courts and Department of Justice, like the current remedy, or it could come in the form of a Congressional mandate to all local elections. Such a mandate would likely be viewed as an assault on federalism (even though it is consistent with the Court's decision in *Bush*), and so a

cumulative remedy would likely require that private citizens bring suits against their local jurisdictions. In order to receive the remedy, groups would have to show that two conditions exist. First, they must show that they are politically cohesive, meaning that individuals within that group regularly vote the same way. Second, they must show that the current electoral structure has the potential to prevent the effective aggregation of their votes. Any group that can demonstrate these two conditions would be able to bring about a change in their local elections, whether that group is defined by race, gender, age, class, geographic location, profession, party affiliation, or any other political interest. Any politically cohesive group could bring a claim against winner-take-all systems under a cumulative remedy.

Under the Supreme Court's decision in *Bush* v. *Gore,* Congress has been granted the authority to regulate the structure of local elections for the purpose of protecting the right of all citizens to cast undiluted votes. Congress ought to use this new power to replace the racist vote dilution remedy that the Voting Rights Act currently provides with a remedy that allows local jurisdictions to switch from winner-take-all elections to cumulative voting. Cumulative systems not only rectify the essentializing structure of the VRA remedy, but also comport more closely with the republican ideal of voting as an act which effectively creates citizens.

Conclusion

The republican government of the United States can function properly only when the right to vote is protected as a vital function of citizens. The legal disconnect between citizenship and suffrage that has made this intense protection impossible for most of the nation's history. However, over the past fifty years, the Supreme Court has transformed the Constitutional underpinnings of the right to vote. For the first time in American history, suffrage is associated with citizenship rather than membership in any other group. The Constitutional evolution of the franchise requires a similar evolution in the legislative protections available for its defense. The Voting Rights Act of 1965 has failed to defend the principle of "one person, one vote" from the effects of vote dilution, and its efforts to do so have essentialized the identity of people of color and perpetuated the structures that have contributed to racism in the United States, including segregation. Luckily, the Supreme Court's decision in *Bush* v. *Gore* provides a Constitutional avenue through which Congress can replace this problematic section of the Voting Rights Act. Congress ought to exercise its expansive authority to protect suffrage as a fundamental right of citizenship under the Equal Protection Clause of the Fourteenth Amendment by replacing the current vote dilution remedy with the establishment of cumulative voting systems. Such systems overcome the issues faced by winner-take-all districts, and comport more closely with the ideals of republicanism. Under cumulative systems, voters are free to aggregate their votes along whatever groupings they prefer, giving minority groups of all kind the opportunity to elect the candidates of their choice.

This argument makes two major contributions to the scholarly debate surrounding the Voting Rights Act. The legitimacy of the Voting Rights Act as an appropriate racial

project has never before been called into question, and I believe my analysis of its racist remedy will provide a substantive justification for its future revision. Additionally, the legal precedent set by *Bush* v. *Gore* has never before been combined with the scholarly literature surrounding cumulative elections. Together, these contributions allow me to make an innovative augment for the replacement of the VRA's vote dilution remedy with a legal mechanism that allows local jurisdictions to move toward cumulative voting systems. The right to vote is an essential component of citizenship. By failing to protect it as such, Congress continues to compromise the integrity of the American republic.

While this thesis is a significant step toward a scholarly justification for amending the Voting Rights Act of 1965 to allow for the establishment of cumulative elections, there are a number of questions that have yet to be answered. I believe there are two main avenues for future academic work on the topic of cumulative voting.

First, scholars ought to fully address the practical effects of cumulative voting through rigorous empirical analyses of electoral results. Though such studies have been conducted for various types of winner-take-all elections, there has yet to be a serious attempt by scholars to quantify the benefits or risks of cumulative elections for minority representation. I hope that such studies will involve a serious examination of the risk that cumulative voting may result in the election of extreme candidates whose policies might target the very populations that the Voting Rights Act was meant to protect. I believe that there is a compelling case to be made for cumulative elections even if they result in the election of racist candidates because the protection provided by the Voting Rights Act has never been a protection against the election of certain people. Rather, it is a protection of the right of racial minorities to aggregate their votes and have an equal

chance to elect candidates of their choosing. In this sense, cumulative voting will likely prove to be more effective than single-member districts in protecting the right to vote because it allows voters to aggregate their votes more freely and more effectively.

Empirical studies of cumulative elections should also focus on the impact that effective political organizing can have in cumulative elections. While cumulative voting will likely require groups to organize in order to experience political benefits, I believe that future research will demonstrate that such organizing has the potential to have a much larger impact in cumulative elections than in winner-take-all systems. I expect that such research will focus on questions of efficacy for groups based on race, gender, age, political ideology, and a host of other issues.

Second, future work in political and racial theory ought to more fully examine the ways in which cumulative voting can be a particularly effective political tool for persons with intersectional identities. I touched on this topic as a single part of a broader argument, but it is an issue with the complexity and importance necessary to fill several books. I hope that scholars will delve into the ability of voters with intersectional identities to distribute their votes according to their membership in a variety of marginalized groups, and how this ability might challenge the traditional understanding of intersectionality as inherently involving conflicting political agendas. Further work could also examine the ways in which candidates with intersectional identities could use the flexibility of cumulative voting to build coalitions of voters from various groups.

I am confident that future investigations into the legal and political ramifications of the Voting Rights Act will substantiate the arguments of this thesis and bolster the case for the establishment of cumulative voting in local elections throughout the United States.

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