

Chapter Two | Vote Injury — Denial and Dilution

The United States has a long history of discriminating against minority voters. Many different mechanisms have been used to prevent members of minority groups from exercising their right to vote, including whites-only primaries, poll taxes, literacy tests, good character tests, and felon disenfranchisement laws, to name a few. The use of these mechanisms resulted in vote “denial” and “dilution” for many minority members.

“Vote denial” occurs when a person is prevented from casting his or her vote. “Vote dilution” happens when a person is able to vote, but his or her vote does not count equally to the votes of others. “Minority vote dilution” refers to the use of voting practices (including redistricting plans) that minimize the voting strength of racial and other minorities. Where a minority group is generally unified in its support for one candidate, dilution occurs when government mechanisms decrease the effectiveness of the group’s votes by preventing them from being aggregated in a way that would successfully lead to the election of the minority-preferred candidate.

The Voting Rights Act of 1965 was carefully constructed to address vote denial and dilution tactics. For example, the Act specifically banned the use of literacy tests. The Act virtually ended outright denial of minority voting rights, but it has not been as successful regarding vote dilution. The Act has made significant progress in decreasing the effectiveness of certain dilutive devices, but it has not yet

existence entirely. Today there are many more elected officials who represent minority voters than there were prior to the Act, but there is still progress to be made. For instance, only four African Americans have been elected to the Senate in the history of the United States, two during the 1800s (during Reconstruction) and two in the 1900s.

“Racial bloc voting” is a phenomenon that affects vote dilution. “Racial bloc voting” (also referred to as “racially polarized voting”) means that members of the same racial group tend to vote the same way. Many people assume that racial bloc voting occurs among minority members without realizing that it is also prevalent in white communities.

Vote dilution continues to this day in many different forms, and it can occur in both at-large election systems and single-member district election systems. Below are several types of dilution devices of which you should be aware. These devices may already be implemented in your jurisdiction, or they could be used in the future. If these devices exist or are proposed in your district, you can take steps to get rid of them (see Chapter Three).

At-large dilutive devices: At-large election systems can be dilutive devices. In the words of the U.S. Supreme Court, “[a]t-large voting schemes...tend to minimize the voting strength of minority groups by permitting the political majority to elect *all* representatives of the district.” *Rogers v. Lodge*, 458 U.S. 613, 616 (1982). But at-large election systems are not always considered dilutive devices. If a plaintiff challenges the validity of this type of election system by bringing a claim under Section 2 of the Voting Rights Act or the Fourteenth Amendment of the U.S. Constitution, then he or she must satisfy the elements of those claims (see Chapter Three).

If you live in an at-large election system, look out for the following additional dilutive devices.

1. Majority-vote requirement: If racial bloc voting exists in both the majority and minority communities, then this requirement can minimize or cancel out a minority group's votes. Usually, a candidate simply has to receive the most votes to win an election. Under a majority-vote requirement, a candidate must receive a majority of the votes to win (usually this means more than half of the votes cast). If no candidate receives a majority, then a run-off election is held.

This device can dilute minority votes in the following manner. Suppose that a city is majority white, with whites comprising sixty percent of the population and blacks making up the remaining forty percent. In an election, one black candidate and several white candidates run for the same office. The several white candidates split the white vote. The black candidate receives more votes than any of the white candidates, but she fails to win a majority of the votes, and a run-off election must be held between the black candidate and the second-place white candidate. In the run-off, most of the white voters vote for the white candidate, and the white candidate receives a majority of the vote, even if she receives no black votes. The white candidate wins the run-off election and takes office, even though she had fewer votes than the black candidate in the first election.

2. Staggered terms: This device allows for the election of just a few of the seats of an elected body every few years, instead of the election of all of the seats simultaneously. With fewer seats up for election, majority voters have a better chance of uniting against a minority-preferred candidate.

3. Candidate-slatting processes: These processes allow chosen groups to run together as a “slate.” Political insiders often control who will be put on a slate, and these insiders have typically been white. If the people who control the slate refuse to put minority-preferred candidates on the slate, then these candidates cannot be elected.

4. Anti single-shot provisions: These provisions compel voters to cast a vote for every open seat, even if voters do not want to support more than one candidate. A voter who casts a vote for less than the entire number of seats open (a “full slate”) will not have his or her ballot counted. Requiring minority voters to vote for a full slate dilutes their voting strength by preventing them from concentrating their support behind one candidate.

5. Residency districts: These provisions require candidates to reside in certain areas of the jurisdiction, even though the seats they are running for will be voted on by voters from the entire jurisdiction. Residency districts force more head to head contests between white and minority candidates, and they remove the option of single-shot voting.

Dilutive devices in district election systems: Single-member district election systems are, by definition, made up of districts, and the way the districts are drawn can result in vote dilution through “gerrymandering.” “Gerrymandering” refers to the drawing of election districts, often unusually shaped, for political advantage.

The term “gerrymander” originated in 1812, when Massachusetts’ state senate district lines were redrawn. The new district lines were drawn by the political party of then-Governor Elbridge Gerry, and they were designed

so that his party would retain power. Some of the districts were oddly shaped. When painter Gilbert Stuart saw a map of one of the districts, he remarked that it looked like a salamander. A newspaper editor replied, "Better to say a *Gerry*-mander!"

If you live in a single-member district election system, be on the lookout for the following gerrymandering dilutive devices:

1. Packing: This device dilutes minority votes by packing as many minority voters into as few districts as possible to minimize the number of representatives that they can elect.

Let's say, for example, that a minority group makes up thirty percent of a county. The county commission has ten commissioners, and each one is elected from one of ten districts. The minority vote in the county could be diluted by "packing" minority voters into one district, where they would be the majority in and influence the election outcome of that one district, but they would have no influence in any other district. Although minority voters make up thirty percent of the county population, their votes would be diluted because they would influence the outcome in only ten percent (one of ten districts) of the elections.

2. Cracking (also called "fracturing"): This device dilutes minority votes by dividing minority neighborhoods into as many districts as possible, thereby preventing minority voters from becoming a majority in (or significantly influencing the vote of) any one district.

3. Stacking: This device dilutes minority votes by combining heavy concentrations of minority population (often sufficiently large to have their own districts) with greater white

population concentrations. By doing this, legislators create district-wide white majorities and decrease the number of minority voters who can be put in other districts.