Enhancing Rural Representation Through Electoral System Diversity

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INTRODUCTION

Rural Virginians face disparities in outcomes regarding health-care, access to important infrastructure, and other services.[1] Some disparities may be related to rurality.[2] The sparseness of population in rural areas may limit the sites where people may access services,[3] triggering the need to travel significant distances to obtain goods and services in such areas.[4] Limited access may lead to disparities even when the quality of goods and services in rural areas is high. The disparities affect all rural Virginians,[5] but disproportionately affect rural Virginians of color.[6] The causes of the

1.   COMM'N TO EXAMINE RACIAL & ECON. INEQUITY IN VA. L., IDENTIFYING VIRGINIA'S RACIALLY DISCRIMINATORY LAWS & INEQUITABLE ECONOMIC POLICIES 34–37 (Jan. 6, 2022), https://www.law.virginia.edu/system/files/news/2022/2022-report.pdf [https://perma.cc/4R82-NUEV] [hereinafter COMMISSION REPORT] (discussing various disparities in rural areas of Virginia).

2.   The Center for Rural Virginia was created, in part, to consider and address such disparities. *See* VA. CODE ANN. § 2.2-2720 (2022).

3.   *See* SETY ABOOALI, VA. STATE OFF. OF RURAL HEALTH, POLICY BRIEF: FOCUS ON SCHOOL-BASED MENTAL HEALTH FOR RURAL CENTRAL VIRGINIA'S YOUTH 1 (2022), https://www.vdh.virginia.gov/content/uploads/sites/76/2022/06/final-Focus-on-School-based-Mental-Health-for-Rural-Central-VAs-Youth.pdf [https://perma.cc/Y9JM-BAT2] ("Those living in rural areas have historically been more susceptible to poor mental health days and decreased access to healthcare care services.").

4.   *See* Thomas C. Ricketts, III, *Geography and Disparities in Health Care*, *in* GUIDANCE FOR THE NATIONAL HEALTHCARE DISPARITIES REPORT 149, 155–57 (Elaine K. Swift ed., 2002); SETY ABOOALI, VA. STATE OFF. OF RURAL HEALTH, POLICY BRIEF: FOOD INSECURITY IN SOUTHWEST VIRGINIA 2 (2022), https://www.vdh.virginia.gov/content/uploads/sites/76/2022/05/Policy-Brief-Food-Insecurity-in-SWVA.pdf [https://perma.cc/U7P6-L2F8] (noting long distances many people in Southwest Virginia must travel to reach a supermarket); Surekha Carpenter & Sonya Ravindranath Waddell, *The Landscape of the Rural Fifth District: Does Race Matter?*, FED. RSRV. BANK OF RICH.: REG'L MATTERS (March 11, 2021), https://www.richmondfed.org/research/regional_economy/regional_matters/2021/rm_03_11_21_landscape_race [https://perma.cc/B743-5UMY] ("Compounding the existing health challenges in rural areas is the recent increase in rural hospital closures that is impacting all rural residents' access to health care.").

5.   *See* ABOOALI, *supra* note 4, at 1 ("The majority of the Southwest Virginia region is federally designated as rural, and has the highest food insecurity and lowest socioeconomic status in Virginia.").

6.   COMMISSION REPORT*, supra* note 1, at 34 ("The challenges discussed affect all rural residents, but disproportionately impact people of color in rural areas. Our hope is that these proposals will target the issues most affecting people of color, while also benefiting all rural Virginians."). Economic disparities have historically fallen on Virginians of color. Anita S. Earls, Kara Millonzi, Oni Seliski & Torrey Dixon, Report, *Voting Rights in Virginia: 1982–2006*, 17 S. CAL. REV. L. & SOC. JUST. 761, 763–64 (2008) (discussing racial disparities in Virginia in the 1980s, 1990s, and 2000s); Carpenter & Waddell, *supra* note 4 ("Rural places have long had higher poverty rates than urban areas in the United States. More specifically,

disparities are complex and myriad, and may be based on race, class, or a combination of both.[7]

The lack of political representation of those who most acutely experience the disparities may help explain the disparities.[8] The interests of racial and political minorities in rural Virginia may not be fully represented in Virginia's legislative bodies, including the General Assembly.[9] Those rural Virginians have the right to vote, however, their interests may be ignored by their representatives. Legislation that may help minimize disparities may not be forthcoming because the interests of those suffering the disparities may not acutely concern their representatives.[10] New programs to help ease the rural disparities may never be proposed.[11] Proposed programs may receive insufficient support from rural legislators and legislators from non-rural areas of Virginia.[12] The lack of representation of the interests of some rural Virginians may stem from the

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a legacy of opportunity gaps between white and black southerners has contributed to an even higher poverty rate for rural black residents.").

7. *See* COMMISSION REPORT, *supra* note 1, at 34 ("[T]his Commission decided to investigate the intersection of rural issues and race issues in the Commonwealth and propose solutions to disparities borne disproportionately by people of color in rural areas."); Carpenter & Waddell, *supra* note 4 ("From slavery through Jim Crow, to the higher poverty rates of today, this article seeks to connect the unique history of our rural black population to today's social and economic rural environment.").

8. This may be a specific manifestation of a more general problem. *See* KHALILAH BROWN-DEAN, ZOLTAN HAJNAL, CHRISTINA RIVERS & ISMAIL WHITE, JOINT CTR. FOR POL. AND ECON. STUD., 50 YEARS OF THE VOTING RIGHTS ACT: THE STATE OF RACE IN POLITICS 23 (2015), https://jointcenter.org/wp-content/uploads/2019/11/VRA-report-3.5.15-1130-amupdated.pdf [https://perma.cc/2AK9-4F8B] ("The results to this point suggest that black voices are less equal than others when it comes to policy.").

9. That would be consistent with national trends. *See* Daniel T. Lichter & James P. Ziliak, *The Urban-rural Interface: New Patterns of Spatial Interdependence and Inequality in America*, 672 ANNALS AM. ACAD. POL. & SOC. SCI. 6, 7 (2017) ("Rural and small-town America is often left at the sidelines in policy discussions, far removed from the American cultural and economic mainstream.").

10. *See* ABOOALI, *supra* note 3, at 1 ("Expanding School-based Mental Health (SBMH) services is an opportunity to focus on the youth population's mental health needs in an effective and convenient way, but legislation is needed to address rural school boards' limited funding resources in order for SBMH to be implemented.").

11. See COMMISSION REPORT, *supra* note 1, at 6–7, for a list of recommended policies and legislation to ease rural disparities that have been largely ignored.

12. A significant amount of potential legislation dies in committee or on the floor of the General Assembly. *See* Jackie DeFusco, *Here's What Bills Lived, Died and Remain Undecided in Divided General Assembly*, WAVY-TV, https://www.wavy.com/news/politics/virginia-politics/heres-what-bills-lived-died-and-remain-undecided-in-divided-general-assembly/ [https://perma.cc/7XKD-DBQY] (Mar. 14, 2022, 7:14 PM); Dave Ress, *Running Out of Time: Life and Death of Bills in the General Assembly*, ROANOKE TIMES, https://roanoke.c om/ne ws/state-and-regional/govt-and-politics/running-out-of-time-life-and-death-of-bills-in-the-general-assembly/article_8317056e-5f3e-544a-90f7-eb1bd6c3dddb.html [https://perma.cc/4 A6K-ABR4] (Mar. 3, 2023) (discussing bills that died without passage).

electoral system used to select representatives, rather than from personal failings of rural representatives.

The representation Virginians receive flows from the dominant electoral system in use in Virginia: first-past-the-post ("FPTP"), single-member districting ("SMD").[13] That system may facilitate a narrow vision of representation that may lead rural representatives to ignore the interests of the portion of their constituency that most starkly faces disparities. The candidate who garners the most first-place votes in an FPTP, SMD voting system wins the election, even if that share of the votes is significantly less than a majority.[14] The FPTP, SMD system may encourage an elected representative to focus on their perceived supporters and to ignore the interests of political minorities who may not have supported the representative. It may spawn representatives who have little incentive to represent the interests of all or even most of their constituents because a tension exists between representing one's entire constituency and focusing on keeping one's supporters happy. Losing focus on representing one's supporters may lead to losing reelection.[15] However, Virginia need not invariably use an FPTP, SMD system.

Virginia law allows electoral mechanisms other than FPTP, SMD systems, such as multimember districting ("MMD") and ranked choice voting ("RCV").[16] MMD involves a single district choosing multiple representatives, resulting in the possibility that more voters be represented by at least one representative who will support their interests.[17] RCV involves electing candidates based

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13. For example, all Congressional representatives and General Assembly members are chosen from single-member districts. *See* VA. CODE ANN. §§ 24.2-302.2(A), -303.3(A), -304.3(A) (2016).

14. *See* Allan Ides, *Approximating Democracy: A Proposal for Proportional Representation in the California Legislature*, 44 LOY. L.A. L. REV. 437, 439–40 (2011) (discussing the mechanics of FPTP systems); Richard H. Pildes & G. Michael Parsons, *The Legality of Ranked-Choice Voting*, 109 CALIF. L. REV. 1773, 1780–81 (2021) (noting the mechanics of FPTP voting).

15. *See* Ford O'Connell, Opinion, *A Surprising Loss for Unsurprising Reasons*, U.S. NEWS & WORLD REP.: OP. (June 14, 2014), https://www.usnews.com/opinion/blogs/ford-oconnell/2014/06/14/eric-cantor-lost-touch-with-his-constituents-before-primary-loss [https://perma.cc/GF4A-K857] (arguing incumbent Virginia Congressman Eric Cantor's loss to Dave Brat in a primary election was due to Cantor failing to prioritize constituent service).

16. *See* VA. CODE ANN. §§ 24.2-304.1, -673.1 (Cum. Supp. 2022).

17. *See* George Bundy Smith, *The Multimember District: A Study of the Multimember District and the Voting Rights Act of 1965*, 66 ALB. L. REV. 11, 11 (2002) [hereinafter Smith, *Multimember Districts and the Voting Rights Act*] ("A [MMD] may be defined as one in which the same voters elect more than one representative to serve a geographical area that could be divided into several areas, each represented by a single person."). The United States Senate is technically elected through MMDs with staggered elections. Each state has two

on the electorate's overall preference for candidates, rather than solely based on the first-place votes a candidate receives.[18] It may allow political minorities to influence or determine who is elected, allowing those groups to help choose representatives who are more likely to support legislation that might help those groups. Now might be the time for Virginia to use MMD and RCV more widely to help political and racial minorities in rural areas have their voices heard.

This Article suggests electoral system diversity could enhance the representation of the interests of political and racial minorities from rural areas in Virginia's legislative bodies. Experimentation with electoral systems to advance democratic and republican interests is common in American history.[19] Expanding the use of electoral mechanisms explicitly authorized under Virginia law, such as MMD and RCV, could change the nature of political representation in rural Virginia, yield more effective representation for racial and political minorities in rural Virginia, and help ease the disparities those rural Virginians face.

Part I of this Article discusses the state of rural representation in Virginia. Part II discusses MMD and RCV as electoral options. Part III suggests a plan for redistricting the General Assembly based on MMD and RCV, noting such a plan could increase civic engagement.

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senators selected from the same district—the entire state. Some have suggested U.S. senators should run from districts inside states. *See* Terry Smith, *Rediscovering the Sovereignty of the People: The Case for Senate Districts*, 75 N.C. L. REV. 1, 73–74 (1996).

18.   Virginia Republicans use RCV to select some of their general election candidates. *See* DEB OTIS, FAIRVOTE, RANKED CHOICE VOTING IN VIRGINIA: A CONSER-VATIVE SOLUTION FOR PARTY NOMINATIONS 1 (2022), https://fairvote.org/report/rcv_in_virginia_report/ [https://perma.cc/38J8-A6ZZ] ("The Virginia GOP has used [RCV] in party-run nomination contests for the last two years as a way to unite the party behind nominees with broad support who will have wide appeal in general elections.").

19.   *See* Pildes & Parsons, *supra* note 14, at 1777 ("Just as we have experimented in the past with at-large or single-member district elections for Congress, state legislatures, and local governments, the trade-offs between SCV and RCV present a policy question for voters and legislators concerning how best to realize various democratic values and aims through the choice of election systems.").

I. RURAL VIRGINIA AND THE NATURE OF REPRESENTATION

Political and racial minorities may not be fully represented when an FPTP, SMD system is in use and a single party dominates. Given this Article's focus on rural Virginia, the issue may appear to be whether political and racial minorities can enjoy full representation in a rural Virginia that is dominated by the Republican Party. However Republican representatives are not necessarily the problem. The problem is an electoral system that encourages whatever party is in charge to drift away from a broad vision of representation toward a narrow one. The drift, exacerbated by highly partisan politics, is the problem.

Virginia politics has been transformed in the last sixty years. The dominance of Republicans in rural Virginia is relatively new. For much of the century following the end of Reconstruction, Virginia—like most Southern states—was solidly Democratic.[20] In the wake of the Voting Rights Act of 1965 ("VRA"), which helped turn many parts of the South from solid Democratic to solid Republican, the Democratic Party and Republican Party have moved to near parity in the Commonwealth.[21] In addition, in the 1960s, the Supreme Court of the United States' one-person, one-vote ("OPOV") jurisprudence upended redistricting by requiring legislative districts have approximately equal populations.[22] Redistricting in Virginia has always been contentious.[23] However, in the wake of the VRA and OPOV, Virginia's redistricting battles morphed from disagreements over whether rural interests are overrepresented versus urban interests to fights over the partisan divide between

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20.   *See generally* DEWEY W. GRANTHAM, THE LIFE & DEATH OF THE SOLID SOUTH: A POLITICAL HISTORY 26 (paperback reprt. 1992) (discussing the predominance of the Democratic Party in southern states during the early twentieth century).

21.   The VRA's effect took time. *See* Michael S. Kang, *Hyperpartisan Gerrymandering*, 61 B.C. L. REV. 1379, 1411–12 (2020) (noting the Republican Party was effectively nonexistent in the South, and would take time to emerge after the VRA's passage).

22.   Reynolds v. Sims, 377 U.S. 533, 577 (1964); Kirkpatrick v. Preisler, 394 U.S. 526, 531 (1969).

23.   *See* Micah Altman & Michael P. McDonald, *A Half-Century of Virginia Redistricting Battles: Shifting from Rural Malapportionment to Voting Rights to Public Participation*, 47 U. RICH. L. REV. 771, 798 (2013) ("From the Commonwealth's inception, Virginia's redistricting has been mired in politics, as is common in other states. The political battles have pitted urban and rural regions, Democrats and Republicans, and Whites and Blacks, and were sometimes narrowly targeted to punish specific politicians.").

Republicans and Democrats.[24] These developments have changed the nature of districting and representation in Virginia.

Rural Virginia's current political geography is clear.[25] The western and southern portions of Virginia are largely rural and tend to elect Republican representatives.[26] The eastern and northern parts of Virginia are more densely populated with large cities and counties that tend to elect Democratic representatives.[27] However, all regions of Virginia contain rural areas[28] and all rural areas of Virginia are home to significant proportions of Republicans and Democrats.[29]

The interests of political minorities should be fully represented in every region of Virginia, whether the area is dominated by a single party or not. However, partisanship and the dominant FPTP, SMD system in Virginia make full representation increase-

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24. Post-1960 census redistricting focused on urban-rural divide rather than partisan divide because Democrats held significant majorities in both houses of the General Assembly. *Id.* at 779. "Following the 1970 census, the primary redistricting issue was again how to reconcile urban population growth with rural political interests." *Id.* at 782. "The 1980s continued the urban and rural battles in the House of Delegates, with Northern Virginia hoping to gain three seats in the House of Delegates, partially due to continued population growth and a perceived shortchange of one seat during the previous decade." *Id.* at 785.

25. However, Virginia's physical geography can be defined in various ways. *See, e.g.*, UNIV. OF VA., DEMOGRAPHICS RSCH. GRP., VIRGINIA'S REGIONS 1–2 (2014), https://demograp hics.coopercenter.org/sites/demographics/files/RegionalProfiles_28July2014_0.pdf [https:// perma.cc/N9CR-JDKH] (dividing Virginia into eight regions based on socioeconomic and demographic characteristics); *Regions in Virginia*, VA. TOURISM CORP., https://www.virginia. org/places-to-visit/regions/ [https://perma.cc/RQV9-MGUM] (dividing Virginia into ten regions based on tourism destinations); *The Regions of Virginia*, VA. MUSEUM OF HIST. & CULTURE, https://virginiahistory.org/learn/regions-virginia [https://perma.cc/GD3L-N356] (dividing Virginia into five regions based on geography).

26. *Virginia General Assembly,* BALLOTPEDIA, https://ballotpedia.org/Virginia_Genera l_Assembly [https://perma.cc/G8PV-TV4G].

27. *See id.* Of course, there are anomalies including rural areas in eastern and northern Virginia and urban areas in western and southside Virginia.

28. *See* VA. STATE OFF. OF RURAL HEALTH, VIRGINIA RURAL HEALTH PLAN 2022-2026, at 1-2 (2022), https://www.vdh.virginia.gov/content/uploads/sites/76/2022/01/Virginia-Rural -Health-Plan_Book_POST_1-24-22_LR.pdf [https://perma.cc/F8WV-JS6W] ("Rural Virginia's geography extends from the wild horse drawn beaches of the Eastern Shore, to the northwestern mountains of the Shenandoah Valley, to the Appalachian highlands of the southwest, and into the former tobacco regions of Central and Southside Virginia.").

29. *See* Lichter & Ziliak, *supra* note 9, at 11–12 ("Rural America is heterogeneous and defies facile generalizations. The same is true of urban America, but this has almost always been understood implicitly."); Dante J. Scala & Kenneth M. Johnson, *Political Polarization Along the Urban-rural Continuum? The Geography of the Presidential Vote, 2000–2016*, 672 ANNALS AM. ACAD. POL. & SOC. SCI. 162, 163 (2017) ("Voters who reside in the most remote rural places, especially if they are dominated by farming, typically favor Republicans. Yet Democrats find electorally important pockets of strength among voters residing in rural areas dominated by recreational amenities and services.").

ingly difficult. Political and racial minorities may need voting mechanisms that increase their ability to elect their candidates of choice to guarantee full representation of their interests.[30] The remainder of this Part considers FPTP, SMD systems, the nature of representation, who represents rural Virginia, and why issues of rural representation may not be resolved through virtual representation.

A. *First-Past-The-Post, Single-Member Districting*

FPTP, SMD is dominant in the United States and Virginia.[31] Elections using the system are simple to understand. Typically, each voter votes for a single candidate, with the candidate with the most votes winning.[32] The system has its virtues and its drawbacks. Its simplicity and its clear identification of a specific representative to represent a district's constituency are virtues.[33] However, the system is prone to gerrymandering and manipulation

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30. On occasion, some representatives may not represent the community that elected them. *See* Collins v. City of Norfolk, 883 F.2d 1232, 1238–39 (4th Cir. 1989) (involving an official who noted she has received substantial voting support from Black voters, but "she did not characterize herself as a representative of the Black community.").

31. SMD has been dominant for decades. *See* Daniel D. Polsby & Robert D. Popper, *Ugly: An Inquiry Into the Problem of Racial Gerrymandering Under the Voting Rights Act*, 92 MICH. L. REV. 652, 664 (1993) ("The American political system is at a fork in the road, and it will have to choose between explicitly recognizing some kind of antigerrymandering [sic] principle or moving away from the single-member district system as its dominant representational form."). That has not always been the case. *See* Conference, *The Supreme Court, Racial Politics, and the Right to Vote:* Shaw v. Reno *and the Future of the Voting Rights Act*, 44 AM. U. L. REV. 1, 89–90 (1994) (transcribing Professor Pamela Karlan's comments on the prevalence of MMD at the local level in the past); Paul A. Diller, *Toward Fairer Representation in State Legislatures*, 33 STAN. L. & POL'Y REV. 135, 168 (2022) ("Because FP[T]P SMDs raise serious democratic problems under our current geopolitical landscape, the time is ripe for states to consider more drastic changes to the districting system. While FP[T]P SMDs seem hardwired into the American political culture, they became widespread only relatively recently. MMD's [sic] were quite common until the 1960s, and survive in a small number of states today, largely in muted form.").

32. Benjamin P. Lempert, Note, *Ranked-Choice Voting as Reprieve from the Court-Ordered Map*, 119 MICH. L. REV. 1785, 1791 (2021) ("Most American jurisdictions, of course, vote in a different way: they use the "single-choice vote" (SCV), where a ballot asks for one preference, not a ranking, and where the winner is the candidate who earns the most votes.").

33. *See* Jonathan S. Gould, *The Law of Legislative Representation*, 107 VA. L. REV. 765, 779 (2021) ("One of the few advantages of a system of single-member geographic districts is that it creates a strong representational link between each legislator and a well-defined set of geographic constituents. A system of single-member districts promotes legislative responsiveness to constituents, local civic and political organizations, and local governments."); Ides, *supra* note 14, at 441–42 ("One of the potential advantages of plurality/majority systems is that such systems create an identifiable link between the elected representative and the residents of a geographically distinct SMD.").

that may not produce a legislature of representatives that represent the interests of the entire populace.[34] Those are significant drawbacks.

FPTP elections can trigger majoritarian concerns. When more than two candidates are on a ballot, the winner may not earn a majority of votes. That is why FPTP systems are also deemed "plurality" systems.[35] Plurality systems are sensible alternatives to elections that require the winner garner a majority of votes regardless of the number of candidates.[36] Systems that allow more than two candidates on the ballot but require the winner to garner a majority of votes may require many rounds of voting to determine a winner.[37]

If several candidates are on the ballot, an FPTP election may not identify the candidate generally acceptable to the largest number of voters. The winner of an FPTP election may win with a small fraction of the votes, with the winning candidate disliked by a majority of voters. In addition, the election may be affected by third-party or independent "spoiler" candidates who change an election's outcome by siphoning votes from major party candidates who would otherwise win.[38] The election may also be skewed by splitters, candidates from the same party who divide the vote among multiple candidates of the same party thereby allowing a different party's candidate to win.[39] Given concerns with spoilers and splitters, FPTP voting may encourage voters to vote strategically,

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34. *See* Ides, *supra* note 14, at 449 ("Winner-take-all does not mean that the winner shares the power with the loser; it means loser-take-nothing. This problem can be compounded at the legislative level where a majority of the SMD-elected legislators represents significantly less than a majority of the electorate—a mere majority of the majority.").

35. *See* Ides, *supra* note 14, at 439.

36. *See* Pildes & Parsons, *supra* note 14, at 1796 (discussing use of plurality voting to avoid the need to rerun elections until a candidate won a majority of votes); *see also* T. Quinn Yeargain, *Democratizing Gubernatorial Selection*, 14 NE. U. L. REV. 1, 8 (2022) (noting various jurisdictions that require a candidate win a majority of the vote to avoid a runoff).

37. The recent race for Speaker of the U.S. House of Representatives is an example of the perils of requiring majority votes. *See* Annie Karni, *McCarthy Wins Speakership on 15th Vote After Concessions to Hard Right*, N.Y. TIMES, https://www.nytimes.com/2023/01/06/us/politics/house-speaker-vote-mccarthy.html [https://perma.cc/ED9Q-Y66N] (Jan. 7, 2023).

38. Pildes & Parsons, *supra* note 14, at 1781–82 (discussing spoiling in which a minor-party candidate siphons votes from a major-party candidate allowing a less popular major-party candidate to beat a more popular candidate from a different major party). Spoilers may not exist. If a race is won by the candidate who wins the most votes, the "spoiler" does nothing more than provide an alternative who is preferred to the top two candidates. Third-place candidates are a feature of the system, rather than a bug in the system.

39. *See id.* at 1781.

rather than for their preferred candidate.[40] Some voters who be-lieve their candidate has no chance to win may not vote at all.[41]

SMD has benefits and drawbacks. It allows a constituency to bond with its representative, who is directly accountable as the constituency's only representative.[42] The relationship between rep-resentative and represented should create a loop, in which commu-nication regarding legislation and what is occurring in the district can constantly circulate between the legislator and constituents. Ironically, SMD may limit the relationship between a representa-tive and some constituents. If the representative ignores constitu-ents whom the representative does not believe supported the rep-resentative's election, those constituents may have no relationship with the representative and may be left without effective represen-tation.[43]

Political minorities would appear to have little opportunity to be elected and represented in an SMD system. However, a political or racial minority's ability to elect its candidate of choice in an SMD system depends on the size of its districts and how the political or racial minority is distributed in the jurisdiction. The smaller the districts and the more concentrated or segregated the political or racial minority is, the more easily that minority can be drawn into a district that allows the group to elect its candidate of choice.[44] For example, a small city dominated by Democrats can anchor a smaller Virginia House of Delegates district in a broadly rural area far more easily than it can anchor a much larger state senate dis-

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40.   Pildes & Parsons, *supra* note 14, at 1782; *see also* Rob Richie, Patrick Hynds, Stevie DeGroff, David O'Brien & Jeremy Seitz-Brown, *Toward a More Perfect Union: Integrating Ranked Choice Voting with the National Popular Vote Interstate Compact*, 15 HARV. L. &. POL'Y REV. 145, 155 (2020) ("There are several problems afflicting American elections that RCV can help solve: unrepresentative outcomes, toxic partisanship, lack of choice, the need for 'strategic voting,' and low turnout. The most common way of voting in the United States—single-choice, plurality voting—contributes to all of these problems.").

41.   *See* Grant M. Hayden, *Abstention: The Unexpected Power of Withholding Your Vote*, 43 CONN. L. REV. 585, 590–92 (2010) (discussing the application of various economic theories to explain voter abstention).

42.   *See* Henry L. Chambers, Jr., *Enclave Districting*, 8 WM. & MARY BILL RTS. J. 135, 146–47 (1999) ("Single-member districting reflects a belief that representative democracy works best when voters can closely identify with a representative, and a representative can closely identify with her constituency. This style of representation requires an easily iden-tifiable constituency and a single representative selected by that constituency.").

43.   Some argue this explicitly. Ides, *supra* note 14, at 449 ("The victor after an SMD election does not, in fact, represent the entire constituency; rather, the victor represents only that part of the constituency that voted for him or (less likely) her.").

44.   A residentially concentrated minority group is the basis for drawing compact, ma-jority-minority districts. *See* Bush v. Vera, 517 U.S. 952, 979 (1996).

trict in the same area.[45] Whether a political minority can win a district and gain representation in an SMD system can be a matter of luck.

B. *Voting and Representation*

The right to representation is linked to, but distinct from, the right to vote. The right to vote is individual; the right to representation is collective. At the Founding, voting was treated as a privilege.[46] Now, voting is typically open to all U.S. citizens who are eighteen years of age or older who have not been convicted of a crime.[47] Voting allows citizens to protect their political interests.[48]

Voting and representation are intertwined, but the ability to vote does not guarantee the ability to elect a representative who will fully represent the voter's interests. In a perfect democratic republic, representatives would represent all their constituents equally by fully presenting the interests of each of their constituents in the relevant legislative body.[49] However, rather than protect the right to representation, American law merely protects the right to not have one's vote diluted.[50]

Protections against vote dilution are afforded to groups and tend to focus on the ability to win elections in a districted system. For example, racial vote dilution doctrine ensures that groups of voters are not limited in their ability to elect their candidates of choice based on their race when their numbers are "large and geographic-

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45.   Virginia is comprised of 40 state senate districts and 100 state house districts, yielding state senate districts 2.5 times the size of state house districts. *See* VA. CODE ANN. §§ 24.2-303.3, -304.03 (2016).

46.   Historically, the franchise was given to those with a specific recognized stake in government's functioning, such as the need to protect their property. *See* Minor v. Happersett, 88 U.S. 162, 172–74 (1874) (listing voter franchise provisions in Founding-era state constitutions); *see also* Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 GEO. WASH. L. REV. 1039, 1046–48 (2017) (discussing property requirements at the Founding).

47.   *See* U.S. CONST. amends. XIV, XV, XIX, XXIV, XXVI.

48.   *See* Chambers, *supra* note 42, at 138 ("At its core, the one-person, one-vote doctrine established that all citizens have an equal right to choose their political representatives, advance their political interests, and influence government.").

49.   That may not be possible, especially when groups of constituents are diametrically opposed to one another. *See* Gould, *supra* note 33, at 795–97.

50.   Racial minorities may have less practical representation than others. *See* BROWN-DEAN ET AL., *supra* note 8, at 23 ("A minority should not have as much influence as a majority. But this does not explain why Blacks win less than all of the other small minorities we examine (such as the poor, those without a high school degree, young Americans, or religious minorities).").

ally compact to constitute a majority in [an SMD]."[51] However, racial vote dilution protections are narrow and are getting narrower.[52]

Outside of the racial vote dilution area, protection against vote dilution is primarily based on the OPOV doctrine. The doctrine ensures votes have relatively equal weight by ensuring representatives in a legislature represent approximately the same number of people. It does not guarantee that any specific voter or political minority inside a district exercises political power. Neither OPOV nor racial vote dilution doctrine guarantees a general right to representation to political groups when a group's number is insufficient to win specific elections. A slightly deeper discussion explains how a right to representation is or is not protected.

The protection the OPOV doctrine provides—limited as it is—is relatively new. The Supreme Court initially resisted recognizing an OPOV doctrine, denying the claim that malapportioned districts could trigger an equal protection claim based on a citizen's exercise of unequal voting power in *Colegrove v. Green*.[53] In *Colegrove*, the plaintiffs argued that, when electing a representative, an individual vote in a district nine times the size of another district is one-ninth as powerful as an individual vote in the smaller district, violating the Equal Protection Clause as a result.[54] The Court declined to address the issue, deeming it nonjusticiable.[55] Two decades later, the Court revisited the issue, finding one citizen's vote should not have substantially more power than another citizen's vote.[56] It ruled a substantial difference in the power of two

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51. *See* Thornburg v. Gingles, 478 U.S. 30, 50 (1986). For a discussion of racial vote dilution doctrine, see Henry L. Chambers, Jr., *Readying Virginia for Redistricting after a Decade of Election Law Upheaval*, 55 U. RICH. L. REV. 227, 257–63 (2020).

52. The Supreme Court's forthcoming decision in *Merrill v. Milligan* may clarify racial vote dilution doctrine. No. 21-1086 (U.S. argued Oct. 4, 2022).

53. 328 U.S. 549, 556 (1946).

54. *Id.* at 566–68 (Black, J., dissenting) (noting Illinois' largest congressional district contained 914,000 people and its smallest contained 112,116 people).

55. *Id.* at 553–54 ("Nothing is clearer than that this controversy concerns matters that bring courts into immediate and active relations with party contests. From the determination of such issues this Court has traditionally held aloof. It is hostile to a democratic system to involve the judiciary in the politics of the people. And it is not less pernicious if such judicial intervention in an essentially political contest be dressed up in the abstract phrases of the law.").

56. Gray v. Sanders, 372 U.S. 368, 379 (1963) ("Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit.").

citizens' votes would trigger an equal protection violation.[57] The Court operationalized the OPOV doctrine by requiring a jurisdiction's legislature to have relatively equipopulous districts.[58]

Though the OPOV doctrine's genesis was an equal protection claim based on the value of an individual voter's vote, there is an assumption embedded in the OPOV doctrine that a representative represents their entire constituency. The equipopulous districts requirement has been justified by a broad majoritarian concern related to the collective power of constituencies.[59] In the wake of the OPOV cases, when the apportionment of state legislatures was at issue, the Court considered whether a legislative majority in a jurisdiction represented a popular majority.[60] The concern centered on whether a minority of the population should be allowed to control legislative enactments.[61] In a jurisdiction with significantly malapportioned districts, a legislative majority could represent a population minority. For example, in the U.S. Senate, a legislative house with districts of wildly different populations, fifty-one senators may represent far less than a majority of the American population.[62] Conversely, in a jurisdiction of equipopulous districts, a legislative majority necessarily represents a popular majority, but only if representatives are deemed to represent all their constituents. The OPOV doctrine treats each elected representative as though the representative speaks for all their constituents.

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57. *Id.* at 379–81 ("The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.").

58. Altman & McDonald, *supra* note 23, at 772 ("Legislative boundaries are periodically redrawn ostensibly to achieve federal and state constitutional and statutory goals. The most important federal criterion is equalizing districts' populations following the decennial federal census, which effectively means redistricting must take place every ten years.").

59. Reynolds v. Sims, 377 U.S. 533, 565 (1964) ("Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators.").

60. *Id.* ("Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will.").

61. *Id.* ("[T]o sanction minority control of state legislative bodies, would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result.").

62. In the 117th Congress, although the Senate was split evenly between Democrats and Republicans, the fifty Democratic senators represented 41.5 million more people than the fifty Republican senators. Mara Liasson, *Democrats Increasingly Say American Democracy is Sliding Toward Minority Rule*, NPR (June 9, 2021, 5:00 AM), https://www.npr.org/2021/06/09/1002593823/how-democratic-is-american-democracy-key-pillars-face-stress-tests [https://perma.cc/3W27-CCWE].

Partisanship can disrupt the assumption that representatives represent all their constituents. Political discussion often focuses on blue and red states, essentializing a state's politics based on which party controls a legislature or the governor's mansion. States controlled by Republicans are red and conservative; states controlled by Democrats are blue and liberal.[63] Essentialism encourages and reflects tribalism.[64] A blue state is Democratic because Democratic voters nearly invariably vote Democratic; a red state is Republican because Republican voters nearly invariably vote Republican. Independent voters often are treated as an interesting sideshow in the discussion, though they may provide the electoral margin of victory that determines whether a state is Republican red or Democratic blue.[65]

The same blue-red discussion often occurs regarding jurisdictions inside states. When counties and cities are colored red or blue based on Republican or Democratic political control, mostly red counties and mostly blue cities emerge.[66] Often, wide swaths of red counties engulf blue cities, though blue counties anchored by urban areas may also emerge.[67] The visual representation can cause some to assert Republicans are more popular than Democrats in vast portions of the country, ignoring that neither party is vastly more popular than the other among the country's populace.[68]

The blue-red state narrative is incomplete. Nearly every part of every state has a significant percentage of people who vote for each

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63. The dichotomy can arise in various policy contexts. *See* Lee-ford Tritt, *Litigation Blues for Red-State Trusts: Judicial Construction Issues for Wills and Trusts*, 72 FLA. L. REV. 841, 852–68 (2020) (discussing differences between red states and blue states regarding wills and trusts jurisprudence).

64. For a discussion of how tribalism may and may not be consistent with democracy, see Seth Davis, *Tribalism and Democracy*, 62 WM. & MARY L. REV. 431 (2020).

65. *See* David A. Hopkins, *Independent Voters are More Important than Ever*, WASH. POST (Dec. 27, 2022, 1:32 PM), https://www.washingtonpost.com/business/independent-vote rs-are-more-important-than-ever/2022/12/27/5e7c3f4e-85eb-11ed-b5ac-411280b122ef_story .html [https://perma.cc/E2PB-RP7S] (noting the large percentage of voters who consider themselves independent and their effect on elections).

66. *See* Scala & Johnson, *supra* note 29, at 181 ("Politically speaking, the urban-rural interface lies in the suburbs of smaller metropolitan cores and at the outer edge of larger metropolitan areas. At this tipping point, where the suburbs start to resemble rural exurbia, and in the vast rural regions beyond, Republicans find much friendlier territory.").

67. *See 2021 Virginia Election Results*, POLITICO, https://www.politico.com/election-res ults/2021/virginia/ [https://perma.cc/88X9-QKE2] (Jan. 10, 2022, 1:22 PM).

68. Rural red areas are much larger geographically than urban blue areas. *See* Scala & Johnson, *supra* note 29, at 163 (noting seventy percent of the America's land is rural).

of America's two major political parties.[69] Significant numbers of Democrats reside in deep red states or deep red areas of states and significant numbers of Republicans reside in deep blue states or deep blue areas of states.[70] An electoral map that colors Virginia—a purple state—red or blue misses nuance. Such a map suggests Virginia is a commonwealth of rural red areas and blue urban areas.[71] The full story is more complex.[72] Though the Republican Party dominates rural Virginia and the Democratic Party dominates urban Virginia, every jurisdiction in the Commonwealth is home to a significant proportion of Republican voters and Democratic voters.

A focus on which party controls a jurisdiction, coupled with FPTP, SMD, can lead to an impoverished vision of representation focusing on supporters rather than constituents. A representative should represent the district's entire constituency.[73] However, a focus on partisan power may lead commentators and the populace to think about a district as a Republican district or a Democratic district. The representative of a Republican district may be assumed to provide different representation than the representative of a district who happens to be a Republican. The former may focus on the Republicans in the district, leaving non-Republicans with little effective representation; the latter may provide a Republican slant

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69. *See* Charles Fain Lehman, *The GOP's Urban Gains*, CITY J. (Nov. 23, 2022), https://www.city-journal.org/gops-urban-gains [https://perma.cc/Z7TK-ZRW9] (noting Republican voting gains in urban areas relative to 2018 and 2020); Josh Kraushaar, *Democrats Show Signs of Life in Rural America*, AXIOS (Dec. 11, 2022), https://www.axios.com/2022/12/11/democrats-rural-america-midterms [https://perma.cc/W37T-5FHH] (discussing Democratic voting gains in rural areas relative to 2020).

70. The urban-rural split is a broad American phenomenon. *See e.g.*, Fred M. Shelley, *The Deeping* [sic] *Urban-rural Divide in U.S. Presidential Politics: Presidential Votes in Iowa, 2008–2020*, POL. GEOGRAPHY, Mar. 2022, at 1 ("In recent years, the electoral gap between urban and rural areas in American politics has intensified, with cities and suburbs tending more Democratic and rural areas tending more Republican."). However, there is substantial complexity. Diller, *supra* note 31, at 160 (discussing how voter migration into and out of urban and rural areas makes the issue very nuanced).

71. *See 2021 Virginia Election Results*, *supra* note 67.

72. More Virginians believe they live in rural areas than demographers would suggest. *See* VA. STATE OFF. OF RURAL HEALTH, *supra* note 28, at 2-2 to -3 (noting both that "People living in communities covering eighty-eight percent of [Virginia] consider those communities rural" and that the Office of Management and Budget's definition of rural areas would consider eighty-eight percent of Virginia's population to be living in metropolitan areas).

73. League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 469–70 (2006) (Stevens, J., concurring and dissenting in part) (discussing representatives' obligation to represent their entire constituency). However, that can be difficult. Gould, *supra* note 33, at 797 (noting the difficulty of representing every part of a constituency).

to their representation of the entire district.[74] In a hyper-partisan world, the two approaches may converge, but the approach to governance matters. Aggressively tending to one's perceived supporters to the exclusion of the interests of political minorities in one's constituency is different from trying to find common ground while refusing to abandon one's political beliefs.

A focus on one's supporters may be part of our system of representation, but it need not be absolute.[75] For example, the U.S. Constitution allocates members of the U.S. House of Representatives to states.[76] Members of Congress represent their state, but are chosen by their district's voters.[77] Though many may argue Members of Congress should decide issues based on more than how their districts will be affected, few would fault them for supporting policy positions their constituents or their supporters in their constituency prefer.[78] Conversely, they can be faulted for ignoring their constituents who did not support them.

A focus on supporters rather than constituents may leave political minorities unrepresented. A political minority may have no right to exercise power in a majoritarian democracy. There is no generalized right to representation or power based on a political minority's numbers in a constituency. However, their interests need not be ignored.[79] The failure to represent the interests of polit-

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74. Gould, *supra* note 33, at 791 ("A Republican legislator in a solidly red district could gain reelection only by attending to the preferences and interests of Republicans; the opposite holds for a Democrat in a solidly blue district.").

75. *Id.* at 789–97 (noting various ways electoral structures can result in representatives cultivating their perceived supporters at the expense of other constituents).

76. U.S. CONST. art. I, § 2 ("The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."). Congressional Representatives are chosen by district because of federal statutory law. 2 U.S.C. § 2c (requiring congressional districts).

77. *See* Chambers, *supra* note 42, at 152 (discussing the nature of congressional representation).

78. Arguably, Congress imposed districting to encourage U.S. Representatives to think from the somewhat narrower view of their district, rather than from a statewide perspective. *See* Rob Richie & Andrew Spencer, *The Right Choice for Elections: How Choice Voting Will End Gerrymandering and Expand Minority Voting Rights, from City Councils to Congress*, 47 U. RICH. L. REV. 959, 959 (2013) ("When the United States Congress first imposed single-member congressional districts on the states in 1842, it had the loftiest of intentions. The several states that at the time elected U.S. House Representatives on a statewide, at-large basis often had only one party win seats due to winner-take-all election rules.").

79. However, minority interests may be protected through judicial review, rather than through the political process. Sonu Bedi, *Collapsing Suspect* Class *with Suspect Classification: Why Strict Scrutiny Is Too Strict and Maybe Not Strict Enough*, 47 GA. L. REV. 301, 330–31 (2013).

ical minorities in a district may be unsurprising, but it is not an inevitable part of majoritarian rule.[80] Political minorities may not control legislation, but their interests should be heard and represented if they are a significant chunk of the population.

Political minorities who represent significant portions of the populace should be represented, though they are not ensured proportional representation. Proportional representation suggests a majority should control a legislature, and a significant political minority should hold a significant minority of seats in a legislature.[81] That assumes representation in a legislature, at the macro-level, should track political interests in the populace. SMD in an OPOV system does not guarantee proportional representation. With virtually no protections for a right to political representation, majority control of a legislature under SMD systems may depend on the geography of a jurisdiction, how voters are distributed in a jurisdiction, the degree of partisan polarization in a jurisdiction, and the use of partisan gerrymandering.[82] Indeed, SMD does not guarantee a jurisdiction's majority party will win a majority of seats in a legislature.[83]

In an SMD system prone to partisan gerrymandering—which the U.S. Constitution does not bar[84]—the interests of political minorities or even those of a party with fifty-percent support can be substantially underrepresented in a legislature. With some measure of partisan redistricting, the assumption that an even partisan split of voters could, or should, yield an even partisan split in a legislature may not hold. Assume a jurisdiction, divided into 100 districts, with 1 million voters (500,000 Republicans and 500,000

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80.   Some would disagree. *See, e.g.*, Ides, *supra* note 14, at 449 ("The victor after an SMD election does not, in fact, represent the entire constituency; rather, the victor represents only that part of the constituency that voted for him or (less likely) her. Winner-take-all does not mean that the winner shares the power with the loser; it means loser-take-nothing.").

81.   *See* Lee Drutman, *Elections, Political Parties, and Multiracial, Multiethnic Democracy: How the United States Gets It Wrong*, 96 N.Y.U. L. Rev. 985, 1015–17 (2021) (discussing the advantages of using proportional representation in heterogenous polities).

82.   *See* Christian R. Grose, Jordan Carr Peterson, Matthew Nelson & Sara Sadhwani, USC Schwarzenegger Inst. for State and Glob. Pol'y, The Worst Partisan Gerrymanders in U.S. State Legislatures 2–5 (2019), http://schwarzeneggerinstitute.com/theworstpartisangerrymanders [https://perma.cc/EYP3-EMDN] (discussing how partisan gerrymandering can lead to minority control of state legislatures).

83.   The Code of Virginia only loosely bars partisan gerrymandering in redistricting. Va. Code Ann. § 24.2-304.04(8) (Cum. Supp. 2022) ("A map of districts shall not, when considered on a statewide basis, unduly favor or disfavor any political party.").

84.   *See* Rucho v. Common Cause, 139 S. Ct. 2484, 2501 (2019).

Demo-crats). If Republicans and Democrats are evenly distributed in the jurisdiction, each district could have an approximate 50/50 partisan split, with the legislative partisan tilt depending on whether the prior election was a wave election in which many voters voted for the opposite party's candidate. Conversely, fifty districts could have an approximate 60/40 Republican lean and fifty districts could have an approximate 60/40 Democratic lean. Each seat would appear safe, with the legislature having no partisan tilt except after a significant wave election year. However, a legislature could have a durable partisan lean if legislative districts are gerrymandered. Sixty districts could have an average 60/40 Republican lean, while forty districts could have an average 65/35 Democratic lean. All districts are relatively safe, with the legislature having a 60/40 Republican lean in typical election cycles, even though OPOV was scrupulously observed.

A political minority in a highly polarized jurisdiction may have virtually no power or influence if districts are drawn to provide relatively slim majorities. For example, assume a jurisdiction containing 1 million voters (520,000 Republicans and 480,000 Democrats) divided into 100 equipopulous districts. If Republicans and Democrats are relatively evenly geographically distributed in the jurisdiction, each district could be approximately fifty-two percent Republican and forty-eight percent Democrat. In a highly polarized jurisdiction, an election resulting in a legislature consisting of seventy Republicans and thirty Democrats might not appear odd. Indeed, finding thirty Democrats to overcome a four percent Republican advantage in a highly polarized jurisdiction might be difficult.

Even under relaxed assumptions, a seemingly skewed legislature might not appear odd. Assume the same highly polarized jurisdiction with more residential sorting by political party.[85] That distribution could yield seventy districts with an average 55/45

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    85.   Sorting happens and geography can matter. *See* Altman & McDonald, *supra* note 23, at 829 (noting that, in Virginia, Democrats tend to live bunched together in a manner that may allow Republicans to win a higher percentage of seats than their percentage share of the vote); Scala & Johnson, *supra* note 29, at 163 (citing *Political Polarization in the American Public*, PEW RSCH. CTR. 13 (2014), https://www.pewresearch.org/wp-content/uploads/sites/4/2014/06/6-12-2014-Political-Polarization-Release.pdf [https://perma.cc/U4R5-D3UN]) ("Even after accounting for sex, race, and ideology, place itself is political. Liberals prefer living in areas where people live closer to one another and can walk to stores and other amenities. Conservatives, on the other hand, prefer living farther apart from their neighbors, even if that means they have to drive significant distances to reach schools and restaurants.").

Republican lean and thirty districts with an average 55/45 Democratic lean. Under these conditions, a legislature with a 70/30 Republican advantage might not appear surprising. That would leave the minority party with little power in a jurisdiction in which it garnered nearly half the votes. If the legislature allowed two-thirds of its members to control all legislative actions and override gubernatorial vetoes, the minority—with forty-eight percent support in the populace—might have virtually no power or influence.

The OPOV doctrine, operationalized through equipopulous districts, is now a bedrock doctrine of American democracy. However, it does not guarantee the full representation of the interests of political minorities. Rough proportional representation may be a legitimate baseline for judging the fairness of an electoral system.[86] Nonetheless, courts—including the Supreme Court of the United States—are quick to note proportional representation is not required under the Constitution.[87] Indeed, even statutes that focus on providing substantive representation to groups of people disclaim any requirement of rough proportional representation.[88] Representation is guaranteed only to groups that win elections, not necessarily to all who participate in the political system. Protecting the interests of voters whose candidates do not win elections is a matter of grace, though only a cramped view of majoritarian rule would necessarily leave the interests of political and racial minorities unrepresented. A lack of protection for the interests of all voters is ironic given the notion that a legislature should consider the interests of all people is an old one.[89]

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86. Johnson v. De Grandy, 512 U.S. 997, 1000 (1994) (holding rough proportionality should be considered in the totality of circumstances when evaluating the opportunity for minority voters to participate in the political process).

87. *E.g.*, *Rucho*, 139 S. Ct. at 2499.

88. 52 U.S.C. § 10301(b) (Voting Rights Act) ("*Provided*, [t]hat nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."); Thornburg v. Gingles, 478 U.S. 30, 84 (1986) (O'Connor, J., concurring) ("[W]e . . . know that Congress did not intend to create a right to proportional representation for minority voters.").

89. *See* Bethune-Hill v. Va. State Bd. of Elections, 114 F. Supp. 3d 323, 341 (E.D. Va. 2015) ("A legislature reflective of the democratic body is the root from which all rights and laws derive. As John Adams wrote, an assembly 'should be, in miniature, an exact portrait of the people at large. It should think, feel, reason, and act like them.'") (quoting JOHN ADAMS, THOUGHTS ON GOVERNMENT: APPLICABLE TO THE PRESENT STATE OF THE AMERICAN COLONIES; IN A LETTER FROM A GENTLEMAN TO HIS FRIEND 9 (Philadelphia, John Dunlap 1776)).

Virginians receive representation in Virginia's legislative bodies based on their numbers.[90] The OPOV doctrine buttressed by Virginia law ensures each citizen's vote carries approximately equal weight.[91] Nonetheless, the interests of political minorities who cannot affect an election through their votes may be unheard.

C. *Representing Rural Virginia*

Republicans overwhelmingly represent rural Virginians. The inability of political and racial minorities in rural Virginia to elect their representatives of choice may lead to a lack of representation of their interests in Virginia's legislature. The General Assembly has few Democratic members from the rural western and southern regions of the state.[92] The two Democratic state senators from the western part of the state represent oddly-shaped districts that have been significantly reshaped into new districts in the wake of the 2020 census.[93] Similarly, there are few Democratic delegates elected from those areas. The Democratic delegates who were elected in 2021 represent districts centered on Charlottesville and Roanoke that are surrounded by districts represented by Republican legislators.[94]

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90.   VA. CODE ANN. § 24.2-304.04(1) (Cum. Supp. 2022) ("Districts shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. A deviation of no more than five percent shall be permitted for state legislative districts.").

91.   *See* Reynolds v. Sims, 377 U.S. 533, 558 (1964). Chambers, *supra* note 51, at 256 (describing the OPOV doctrine).

92.   District maps for the Virginia State Senate and the House of Delegates provide helpful visual depictions of this reality. *Virginia State Senate*, BALLOTPEDIA, https://ballotpedia.org/Virginia_State_Senate [https://perma.cc/Z4KD-8KEB]; *Virginia House of Delegates*, BALLOTPEDIA, https://ballotpedia.org/Virginia_House_of_Delegates [https://perma.cc/U8WD-EA66].

93.   John Edwards and Creigh Deeds represented Senate Districts 21 and 25, respectively. *See Virginia State Senate*, *supra* note 92. Because districts were redrawn and renumbered for the 2023 election, Senator Edwards is running to represent District 4, and Senator Deeds is running to represent District 11. *State Senate District 4*, VA. PUB. ACCESS PROJECT, https://www.vpap.org/offices/state-senate-4/district/ [https://perma.cc/6DRK-UCJX]; *State Senate District 11*, VA. PUB. ACCESS PROJECT, https://www.vpap.org/offices/state-senate-11/district/ [https://perma.cc/RA29-KXGT].

94.   In 2021, Virginia House of Delegates District 57 covered Charlottesville and District 11 covered Roanoke. *Virginia House of Delegates*, *supra* note 92. The new districts—54 and 38, respectively—have boundaries similar to their predecessors. *See House of Delegates District 54*, VA. PUB. ACCESS PROJECT, https://www.vpap.org/offices/house-of-delegates-54/redistricting/ [https://perma.cc/77XP-KNLM]; *House of Delegates District 38*, VA. PUB. ACCESS PROJECT, https://www.vpap.org/offices/house-of-delegates-38/redistricting/ [https://perma.cc/T7FS-4UWY].

The Republican dominance in rural Virginia may change over time, but may not change soon. All General Assembly districts were reapportioned and redrawn in the wake of the 2020 census. The 2021 House of Delegates general election was run using the pre-2020 census districts.[95] Delays in receiving census data, coupled with problems related to the newly-created Virginia Redistricting Commission, delayed redistricting so that the districts could not be redrawn and approved before the 2021 elections.[96] The Supreme Court of Virginia approved new districts in December 2021.[97] In 2023, the entire General Assembly—100 delegates and 40 senators—will run for office. Little reason exists to believe the Republican dominance in rural areas will change significantly with the new districts.

Rural areas voted for Republicans in the 2020 presidential and 2021 gubernatorial elections. In 2020, President Biden won Virginia fifty-four percent to forty-four percent,[98] but most rural areas of the Commonwealth voted for President Trump.[99] However, even in some heavily Republican areas, Biden had significant support.[100] In 2021, Republican Glenn Youngkin won the gubernatorial election over Democratic former Governor Terry McAuliffe, 50.6% to 48.6%.[101] Rural areas of the Commonwealth voted heavily for Youngkin, but McAuliffe had significant support in most rural

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95. Dean Mirshahi, *Virginia's Redistricting Commission Plans to Submit Redrawn Legislative Maps Before Nov. 2 Elections*, WRIC, https://www.wric.com/news/politics/virginias-redistricting-commission-plans-to-submit-redrawn-legislative-maps-before-nov-2-elections/ [https://perma.cc/6QBV-2GUK] (Apr. 1, 2021, 11:03 AM).

96. *Id.*; Dean Mirshahi, *Shifting its Focus, Virginia Redistricting Commission Appears Unlikely to Redraw State Legislative Maps*, WRIC, https://www.wric.com/news/politics/capitol-connection/shifting-its-focus-virginia-redistricting-commission-appears-unlikely-to-redraw-state-legislative-maps/ [https://perma.cc/V3VQ-5EZ7] (Oct. 11, 2021, 4:43 PM).

97. *In re* Decennial Redistricting, 300 Va. 379, 379–80 (2021).

98. *2020 November General*, VA. DEP'T. OF ELECTIONS, https://results.elections.virginia.gov/vaelections/2020%20November%20General/Site/Presidential.html [https://perma.cc/8DWB-EYBU] (Jan. 21, 2021, 3:01 PM).

99. *See Joe Biden Won in Virginia*, POLITICO, https://www.politico.com/2020-election/results/virginia/ [https://perma.cc/CR3G-VK6L] (Jan. 6, 2021, 4:41 PM).

100. For example, in the three most heavily-Republican of Virginia's eleven congressional districts, President Biden won 28.3%, 38.4%, and 45.0% of the vote. VA. DEP'T. OF ELECTIONS, *supra* note 98.

101. *2021 November General*, VA. DEP'T. OF ELECTIONS (Dec. 8, 2021, 11:17 AM), https://results.elections.virginia.gov/vaelections/2021%20November%20General/Site/Statewide.html [https://perma.cc/87HS-W3EG].

areas of the Com-monwealth other than in far southwestern Virginia and some counties in the Shenandoah Valley.[102]

The existence of a significant political minority in rural areas of Virginia has benefits and drawbacks. The minority's existence suggests heterogeneity and a significant diversity of thought in those areas. Conversely, the larger the political minority, the larger the portion of the population that may not have their interests represented in the legislature. In an area dominated by a single party, that party's primary election may function as the general election.[103] Unless voters from the political minority are willing to vote in the dominant party's primary election, they may have little or no ability to affect who ultimately represents them. In such areas, representatives may also need to focus on representing their base rather than the mainstream of their party to win the primary.[104] That may lead to more extreme candidates who are unlikely to fully represent the interests of political and racial minorities in their constituency.

D. *Rural Problems, Urban Problems, and Virtual Representation*

Concerns about political minorities in Virginia not having their interests represented may seem overblown if those political minorities are aligned with a political party that is well represented in state and local government. In theory, a representative in one part of a jurisdiction can represent a voter in a different part of the jurisdiction. However, even if a representative is inclined to represent the interests of a political minority in a different part of a jurisdiction who is aligned with the same political party, the representative may not have sufficient knowledge or ability to do so. Members of the representative's political party may support different solutions to the same problem and may support very different solutions to somewhat different problems.

Some problems may be common to urban and rural areas. In some respects, urban and rural communities may not be starkly

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102.   *See 2021 Virginia Election Results*, WASH. POST, https://www.washingtonpost.com/elections/election-results/virginia/ [https://perma.cc/7WBA-T7DZ] (Dec. 3, 2021, 12:12 PM) (providing a map with jurisdiction-by-jurisdiction results).

103.   Gould, *supra* note 33, at 795.

104.   *Id.*

different.[105] Indeed, whether an area is fully urban or fully rural may be unclear, with urban and rural areas arguably being less a binary than a continuum based on interests and geography.[106] Conversely, in other locales, a rural-urban divide may appear clearer, with different amounts of political attention paid to the areas triggering resentment.[107] Rural problems may differ from urban problems.[108]

Sparse population may make some disparities in rural areas more difficult to solve. Solutions to problems that might work in densely populated areas differ from solutions that might work in sparsely populated areas. The need for a significant volume of customers or clients may make some services difficult to provide in rural areas. For example, rural healthcare facilities may be required to serve a large area to have sufficient population to support them. The distance to travel to the facilities could affect health outcomes.[109] Increased interest from political representatives who

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105.   Lichter & Ziliak, *supra* note 9, at 7 ("At the time of this writing, the urban-rural divide seemingly has never been greater. That rural Americans across the country voted in substantial numbers for Donald Trump makes this point; rural people tipped the national scale in Trump's favor and against urban and coastal elites, minorities, and immigrants. But, perhaps paradoxically, it may also be the case that urban and rural communities and people have also never been more tightly integrated and interdependent.").

106.   *Id.* at 10 ("[C]onceptual and operational definitions of urban and rural are subject to great variation, and scholars and policy-makers not only adopt different classification schemes but also often view rural and urban as polar ends of a continuum in which America's people and communities are arrayed. Urban-rural is not a simple binary."). The divide can extend to approaches to health. *See* Yue Sun & Shannon M. Monnat, *Urban-rural and Within-Rural Differences in COVID-19 Vaccination Rates*, 38 J. RURAL HEALTH 916, 919 (2022) ("Using county-level data from the CDC, we found that COVID-19 vaccination rates are significantly lower in rural than in urban counties as of August 11, 2021."); *see also* Shelley, *supra* note 70, at 2–3 (noting increasing political polarization between rural and urban areas across the nation).

107.   Scala & Johnson, *supra* note 29, at 163 ("The differences between urban life and rural life, and the feeling among rural residents that their areas are often neglected by political elites, lead to resentment among those who live in areas peripheral to metropolitan areas.").

108.   *See* ABOOALI, *supra* note 3, at 3 ("A unique barrier to seeking mental health care in rural areas is the stigma against it. In small, rural communities, there tends to be a lack of trust in confidentiality since everyone knows each other.").

109.   *See* CTRS. FOR MEDICARE & MEDICAID SERVS., IMPROVING HEALTH IN RURAL COMMUNITIES: FY 2021 YEAR IN REVIEW 1 (2021), https://www.cms.gov/files/document/fy-21-improving-health-rural-communities508compliant.pdf [https://perma.cc/WR66-P9RV]; AGENCY FOR HEALTHCARE RSCH. & QUALITY, PUB. NO. 17(18)-0001-2-EF, NATIONAL HEALTHCARE QUALITY & DISPARITIES REPORT: CHARTBOOK ON RURAL HEALTH CARE 4–6 (2017), https://www.ahrq.gov/sites/default/files/wysiwyg/research/findings/nhqrdr/chartbooks/qdr-ruralhealthchartbook-update.pdf [https://perma.cc/3R2C-S44L].

want to help solve rural health disparities may not solve these physical problems.

The state's geography may also matter.[110] The distance between predominantly urban areas and predominantly rural areas of Virginia may make solutions to some urban problems different than solutions to some rural problems. With urban areas of Virginia located primarily in the northern and eastern parts of the state and many rural areas located in the western and southern parts of Virginia, the state's geography and topography may create local or regional problems in rural areas that are not replicated in urban areas of the state. If interests and solutions to problems relate to regional geography and topography, the problems and interests of rural areas may be different than the problems and interests of urban areas in ways that do not merely relate to population density.

Virtual representation may not address concerns regarding political minorities in rural Virginia who lack strong representation.[111] In a highly partisan context, an urban Democrat might seem able to represent a rural Democrat. In a state where cities have grown with suburbs, exurbs, and rural areas surrounding them in similar geography and topography, the urban issues and rural issues might be similar enough that urban representatives could virtually represent suburban and rural members of the same party. Similarly, rural representatives might seem able to virtually represent urban members of the same party. However, the regional interests and problems of rural Democrats may be sufficiently different than the interests and problems of urban Democrats to render virtual representation among those groups nearly impossible. Democratic legislators who represent urban areas may not neces-

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110.   Place can matter. *See* Lichter & Ziliak, *supra* note 9, at 21 ("Economic disparities in income and poverty are associated with disparities in economic and geographic access to health care and physical and emotional well-being. Hunger and food insecurity also has a spatial dimension.").

111.   Virtual representation tends to be problematic. *See* Joseph Fishkin, *Taking Virtual Representation Seriously*, 59 WM. & MARY L. REV. 1681, 1682 (2018) ("Nobody likes virtual representation. Even the suggestion of it carries a taint of illegitimacy. There are good reasons for this. The history of democratic political development, both in this country and elsewhere, has been a history of the incremental, halting, painfully slow, sometimes reversed, always contested replacement of *virtual* representation, in which people do not get to vote for their representatives, with *actual* representation, in which they do.").

sarily be able to virtually represent the interests of rural Democrats.[112]

In addition, divisions among rural communities may exist.[113] Rural areas are not homogeneous.[114] Different parts of rural Virginia may have local problems that require local solutions.[115] Even if some rural Democrats were elected, they may not be able to represent the interests of Democratic rural voters in other areas of the state adequately.

Our dominant electoral system in Virginia may provide the incentive to ignore the interests of political and racial minorities in rural areas. Disparities in rural outcomes may result, to a degree, from the incentive Virginia's electoral structure provides to legislators to ignore those interests. Legislators from rural areas may care about racial or political minorities in their constituency,[116] but they have been incentivized by the electoral system to prioritize the constituents they believe voted for them or supported their campaigns financially. Some representatives may be blind to the problems of some constituents who have supported them,[117] but those legislators may face little peril by ignoring the interests of political or racial minorities who did not support the representative electorally or financially.[118]

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112. *See* COMMISSION REPORT, *supra* note 1, at 34–37; CTRS. FOR MEDICARE & MEDICAID SERVS., *supra* note 109, at 1.

113. *See* VA. STATE OFF. OF RURAL HEALTH, *supra* note 28, at 1-2 ("Understanding that rurality is extremely difficult to define, once you've visited one rural community, you have visited one rural community.").

114. *See* Scala & Johnson, *supra* note 29, at 163 ("In fact, rural America is a deceptively simple term describing a remarkably diverse collection of places. It encompasses more than seventy percent of the land area of the United States and 46 million people.").

115. For example, rural communities have varied responses to public health problems. *See* Sun & Monnat, *supra* note 106, at 919 ("Within rural counties, average vaccination rates [for COVID 19] are highest in recreation-dependent counties and lowest in mining- and farming-dependent counties.").

116. Alternatively, a lack of care could explain a lack of economic prosperity for people of color in the Commonwealth. *See* Earls et al., *supra* note 6, at 763 (noting the lack of socio-economic gains African Americans made in Virginia from the 1980s to 2000s).

117. *See* Collins v. City of Norfolk, 883 F.2d 1232, 1239 (4th Cir. 1989) ("While being thoroughly questioned on her sources of political support, Howell admitted that she had received high levels of black support in the past, but she did not characterize herself as a representative of the black community . . . . She did not think that the black community of Norfolk had any special needs or interests.").

118. That might explain why proposals to help rural Virginians may fall on deaf ears. *See* COMMISSION REPORT, *supra* note 1, at 34–47 (discussing rural disparities and recommending policies to ameliorate them).

Plurality voting in a polarized, partisan system allows the dominant party in a jurisdiction to functionally choose the general election winner in their primary.[119] FPTP, SMD is not designed to allow the interests of political and racial minorities to be represented. If minority interests are represented, it will be by the grace of the representative chosen by majority interests, through the virtual representation of a legislator chosen in a different district, or through legal compunction such as the VRA.[120]

The effects of partisanship, one-party rule, and plurality-based SMD may ensure the views of rural political minorities, including the rural poor, are unlikely to be heard. The electoral system may leave the interests of political and racial minorities in rural areas poorly represented in Virginia's legislative bodies.[121] However, the interests and voices of significant political minorities should be heard in Virginia's legislative chambers. Rural political minorities may need dedicated representatives if their interests are to be represented. If the only way for those interests to be heard is to have a representative focused on those interests, the electoral system should be reformed to help political minorities influence the election of a representative or to help them elect a representative of choice.

A different set of representatives may not change outcomes for rural Virginians. The rural disadvantaged may be disadvantaged because the remainder of the state may not care about them. Conversely, they may be disadvantaged because rural representatives have not convinced the rest of the General Assembly to do what is necessary to eliminate the disparities between rural and non-rural

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119.   That is the case now and historically was the case in the one-party South in the context of the White primary. *See generally* United States v. Classic, 313 U.S. 299, 314 (1941) (finding that an interference with the right to vote in a congressional primary is unconstitutional when that is the only stage where a voter has "any practical effect on the ultimate result").

120.   United States Representative Adam Clayton Powell, Jr. (D-NY) and various other congressmen virtually represented Black America in Congress during the middle of the twentieth century. STAFF OF COMM. ON H. ADMIN., BLACK AMERICANS IN CONGRESS 1870–2007, H.R. DOC. NO. 108-224, at 236 (2008) ("The burden of advocating black interests fell on the shoulders of a few Representatives: De Priest and Arthur Mitchell of Illinois in the 1930s and Powell and Dawson in the 1940s, joined by Diggs and Robert Nix of Pennsylvania in the 1950s.").

121.   The problem is not limited to Virginia or to today. *See id.* at 237 (describing how the Black representatives of the middle twentieth century were among the elite in their communities, thus hardly resembling their less-affluent constituents).

Virginians.[122] Nonetheless, there are disparities between urban and non-urban Virginia, and a significant portion of rural Virginia does not choose its representative of choice. If the electoral system transmits power to representatives to make change, the lack of representation and the disparities may be linked.

II. ELECTORAL DIVERSITY

Using electoral systems other than or in addition to FPTP, SMD could help facilitate the representation of the interests of political and racial minorities in rural areas in Virginia, possibly lessening the disparities those groups face. MMD and RCV are two options that can help political and racial minorities influence elections or choose their representative of choice in rural areas. MMD, which involves districts that elect multiple representatives, has been popular historically but has fallen out of favor in the wake of the VRA.[123] Virginia law allows MMD in some elections.[124] RCV, which allows voters to rank multiple candidates they are willing to have represent them—rather than choose a single candidate—has recently been approved for some Virginia elections.[125] Using MMD, RCV, or both in more Virginia elections, including General Assembly elections, could help rural political and racial minorities have

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122.   AGENCY FOR HEALTHCARE RSCH. & QUALITY, *supra* note 109, at 4 ("Compared with their urban counterparts, residents of rural counties are: [o]lder, [p]oorer, [m]ore likely to be overweight or obese, and [s]icker."). Some of the disparities may be very difficult to resolve.

123.   *See* Holloway v. City of Virginia Beach, 42 F.4th 266, 270, 273 (4th Cir. 2022) (discussing VRA challenges to MMDs); *see also* Earls et al., *supra* note 6, at 768 ("As of 1991, only nine of the state's forty-one cities abandoned at-large council elections. Eight of the nine converted because of litigation under the Equal Protection Clause or DOJ intervention under the VRA. Without the VRA, African-Americans would have undoubtedly been denied participation or accorded only token representation on governing bodies in these jurisdictions."). *See generally* Smith, *Multimember Districts and the Voting Rights Act*, *supra* note 17 (providing an extensive discussion of the tension between MMD and the VRA).

124.   VA. CODE ANN. § 24.2-304.1(A) (Cum. Supp. 2022) ("Except as otherwise specifically limited by general law or special act, the governing body of each county, city, or town may provide by ordinance for the election of its members on any of the following bases: (i) at large from the county, city, or town; (ii) from single-member or multi-member districts or wards, or any combination thereof; or (iii) from any combination of at-large, single-member, and multi-member districts or wards.").

125.   *Id.* §24.2-673.1(B) (Cum. Supp. 2022) ("Elections of members of a county board of supervisors or a city council may be conducted by ranked choice voting pursuant to this section. The decision to conduct an election by ranked choice voting shall be made, in consultation with the local electoral board and general registrar, by a majority vote of the board of supervisors or city council that the office being elected serves.").

their interests heard by electing their candidates of choice, affecting who is elected, or both.

A. *Multimember Districting*

MMD involves dividing a jurisdiction into districts, each of which will be represented by multiple legislators.[126] MMD is neither new nor foreign to Virginia or the United States.[127] Virginia authorizes the use of MMDs by statute.[128] The General Assembly was elected in part through MMDs until the U.S. Department of Justice ("DOJ") declined to allow their use after the post-1980 census redistricting.[129]

MMD has been problematic in the recent past because it can allow majorities to stop racial minorities from selecting their representatives of choice.[130] It can also stop political minorities from electing their representatives of choice, though that has not typically been deemed a concern. The mathematics of MMD is the core of the problem. Traditionally, MMD systems allow each voter to control the same number of votes as representatives to be chosen,

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126.   The terms "multimember" and "at-large" are sometimes used interchangeably. At-large voting often refers to the election of an entire jurisdiction's legislative body in a jurisdiction-wide vote, such as a non-districted countywide election of all members of a school board. *See* Chambers, *supra* note 42, at 144–45 (discussing mechanics of MMD and at-large voting).

127.   Multiple states allow MMD for various offices, including state legislative seats. *See, e.g.*, MD. CONST. art. III, § 3 ("Each legislative district shall contain one (1) Senator and three (3) Delegates. Nothing herein shall prohibit the subdivision of any one or more of the legislative districts for the purpose of electing members of the House of Delegates into three (3) single-member delegate districts or one (1) single-member delegate district and one (1) multi-member delegate district.").

128.   VA. CODE ANN. § 24.2-304(1) (Cum. Supp. 2022).

129.   Altman & McDonald, *supra* note 23, at 786–87 (noting that the General Assembly finally jettisoned its remaining MMDs in the post-1980 census redistricting at the DOJ's behest); Earls et al., *supra* note 6, at 771 ("The DOJ objected to portions of the 1981 reapportionment of the Virginia House of Delegates. Specifically, the DOJ noted that the City of Norfolk was retained as a large, multi-member district, whereas a fairly apportioned plan of single-member districts would have provided for two districts with substantial African-American majorities. The multi-member district plan had the inevitable effect of limiting the potential of African-Americans to elect their candidates of choice.").

130.   Collins v. City of Norfolk, 883 F.2d 1232, 1236 (4th Cir. 1989) ("The Supreme Court has long recognized that at-large voting in a multimember political unit, such as Norfolk's city council, may prevent minorities from electing representatives of their choice by diluting their voting strength."); Earls et al., *supra* note 6, at 769 (discussing how at-large voting had impeded African American voters from electing sufficient candidates of choice in Danville, Virginia's city council elections).

with each vote cast for a different candidate.[131] Under those conditions, when fifty-one percent of the electorate votes for the same candidates, a bare majority can control 100% of seats. Consider an election to choose three representatives in which each of 1,000 voters is given three votes with each vote required to be cast for a different candidate. If 501 voters vote for the same three candidates, none of the other candidates can win more than 499 votes (one vote apiece from each of the remaining 499 voters). The three candidates preferred by 50.1% of voters win the three seats.[132]

A racial majority engaging in polarized bloc voting could deny a significant racial minority any seats in the MMD. The plan would not require much coordination. The majority party would need to hold a party primary to select the same number of candidates as legislators to be elected in the general election. If the majority-party members voted for those candidates, the candidates would be elected, and no candidates favored by the political minority would be elected. The primary would essentially become the general election. Not surprisingly, the Supreme Court eventually determined the VRA would limit the use of MMD when it was used or maintained to guarantee, or had the effect of guaranteeing, a racial minority would be unable to elect a representative of choice.[133] If an SMD system would allow a minority group to elect a representative of choice but a multimember system applied to the same jurisdiction would not, the choice to use the multimember system triggers VRA scrutiny.[134] In a jurisdiction with segregated

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131. This can be contrasted to cumulative voting which allows multiple votes to be cast for a single candidate. *See* Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 U. CHI. L. REV. 769, 835 (2013) (discussing limited and cumulative voting).

132. *See* Diller, *supra* note 31, at 183 ("[I]t was entirely possible—and, indeed, quite common—for an all-white slate to win all seats within a district using winner-take-all, particularly where whites were a majority of the population and there was racially polarized voting."). The purpose of single-member districting was to alter this phenomenon. *See* Richie & Spencer, *supra* note 78, at 959 ("Proponents argued that single-member districts would ensure fair representation of every viewpoint, majority or minority, making Congress a 'mirror of the people.'" (quoting CONG. GLOBE, 27th Cong., 2d Sess. app. 345 (1842) (statement of Rep. John Reynolds)).

133. Thornburg v. Gingles, 478 U.S. 30, 47 (1986); *see also* Holloway v. City of Virginia Beach, 42 F.4th 266, 270–71 (4th Cir. 2022) (discussing *Gingles* and law underlying interaction between SMD, MMD, and the VRA).

134. *Gingles* provides a three-part test to determine when the VRA had been violated. *See* Chambers, *supra* note 51, at 242 ("The three *Gingles* preconditions are: (1) the minority voters must be sufficiently numerous to constitute a majority in a regularly drawn single-member district, (2) the minority voters must be politically cohesive, and (3) bloc voting must exist such that nonminority voters can generally stop the minority voters from electing their candidate of choice." (citing *Gingles,* 478 U.S. at 50–51)).

neighborhoods and racially polarized voting, districting is more likely to provide representation for minority rights than at-large districting or MMD.[135] Therein lies the preference for SMDs.[136] Thus, MMDs fell out of favor.

A political minority becomes more likely to be able to elect a representative of choice under an MMD system when the MMD system restricts the number of votes a voter can cast to fewer than the number of representatives elected.[137] Limiting a voter in an MMD to a single vote is sensible if an MMD is treated as the combination of several SMDs. A voter in an SMD typically casts a single vote. Limiting that voter to a single vote when multiple districts are combined is not surprising.[138]

When a voter is given a single vote in an MMD election, a candidate is guaranteed election by winning votes based on the following formula:

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135.   *See* Richie & Spencer, *supra* note 78, at 962–63 ("In places with racially polarized voting, the power of electoral majorities to shut out voters in the minority can allow those candidates preferred by the white majority to win 100% of the seats, despite a substantial number of racial minorities preferring other candidates. Such outcomes make a mockery of the principle of one person, one vote; while every voter has the same number of votes, voters in the majority have five votes that each help elect a candidate, while voters in the minority can elect none.").

136.   *See id.* at 960 ("At the state and local level, judges routinely order creation of single-member, winner-take-all districts as the judicially preferred remedy to violations of the Voting Rights Act despite evidence of the shortcomings of these districts.").

137.   If political or racial minorities are evenly dispersed in districts, MMDs may be useful to help them elect a candidate of choice. In that circumstance, the minority group may be a minority in every district that could be reasonably drawn, leaving them unable to elect a representative of choice. Conversely, some jurisdictions have attempted to convert an SMD system into an MMD system with the result that some African American voters who could elect a representative of choice under the SMD system would be unable to do so under the MMD system. *See* Earls et al., *supra* note 6, at 772 (discussing a DOJ-rejected proposal by Greensville County, Virginia); Richie & Spencer, *supra* note 78, at 966 ("Consequently, many southern jurisdictions began shifting to elections by winner-take-all, at-large methods that would allow racial minorities to cast a ballot, but deny them any reasonable possibility of actually electing anyone. Immediately following the passage of the VRA, for example, many local jurisdictions in Georgia, North Carolina, South Carolina, Louisiana, and Mississippi switched to winner-take-all, at-large elections.").

138.   An interesting question is whether Virginia could recreate traditional at-large districts in which voters could cast as many votes as representatives to be elected. That could lead to all Democrats or all Republicans being elected over a large area that would typically elect a combination of Republicans and Democrats. The adoption of such a plan is unlikely to violate the U.S. Constitution given that partisan gerrymandering that could lead to the same result does not appear to violate the U.S. Constitution. Rucho v. Common Cause, 139 S. Ct. 2484, 2489 (2019). The plan might violate Virginia's bar on partisan gerrymandering in redistricting, but that is unclear. *See* VA. CODE ANN. § 24.2-304.04 (Cum. Supp. 2022).

- votes sufficient for victory = (total number of votes cast/(number of representatives to be chosen+1)) + 1

The formula may appear complicated, but it is easy to understand. If three candidates are to be elected in an election with 1000 votes cast, the votes necessary to guarantee a candidate receives one of the top-three vote totals is:

- (1000/(3+1))+1 = 251

If Candidate A receives one-fourth of the votes plus one (251), there are not enough votes (749) remaining for three candidates to beat or tie Candidate A. If Candidate B receives 251 votes and Candidate C receives 251 votes, only 247 votes remain for any other candidate. Candidate A must be a top-three finisher, winning a seat as a result.[139]

In an MMD that selects two representatives, a candidate who wins 33.4% of the votes cast is guaranteed to win a seat. A motivated 33.4% of voters can ensure the election of their candidate of choice. Advocating for a system in which 33.4% of voters in a district can control a legislative seat in a two-representative MMD election may seem problematic. However, in an SMD in which the winner of a party primary may be virtually guaranteed to win the general election, a candidate may functionally win the election by energizing less than 33.4% of the electorate.

The more representatives chosen in the MMD, the smaller the proportion of voters must be to elect their candidate of choice. However, the larger the MMD, the larger the number of votes in support of a specific candidate is required to guarantee representation. Assume a jurisdiction with twelve SMDs of 1000 voters each. A candidate needs 501 votes in a specific district to guarantee election. A candidate would need the following number of votes to guarantee election under various MMD plans in the same jurisdiction:

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139. *See* Richie & Spencer, *supra* note 78, at 983–84 ("For choice voting, the threshold of exclusion depends on the number of seats being elected. Candidates will be elected if they receive one more than a percentage of the vote equal to one divided by one more than the number of candidates. If choice voting were applied to a single-member district, the winning candidate would need one vote more than one-half, or fifty percent plus one vote; in a two-seat election, a candidate would need one vote more than one-third, or 33.33% plus one vote; in a three-seat election the candidate would need one vote more than one-fourth, or twenty-five percent plus one vote; in a four-seat election the candidate would need one vote more than one-fifth, or twenty percent plus one vote; and so on, with representation becoming more proportional the greater the number of seats to be filled.").

- six two-member districts (2000 voters) 2000/3 + 1 = 667 votes (in a district)
- four three-member districts (3000 voters) 3000/4 + 1 = 751 votes
- three four-member districts (4000 voters) 4000/5 + 1 = 801 votes
- two six-member districts (6000 voters) 6000/7 + 1 = 858 votes

If a candidate's supporters are fairly evenly spread throughout the jurisdiction, the candidate may be likely to win a seat in a multimember district. Similarly, if voters with similar interests are evenly spread through a jurisdiction, MMD may allow them to elect a candidate of choice who would represent their interests when they would be unable to do so in an SMD system.

There is a wrinkle for a majority party in an FPTP, MMD, limited voting system. The majority party may need to organize to avoid winning less than a proportional share of seats. If one or a few majority-party candidates are very popular, they may win far more votes than necessary to secure a seat. If so, multiple minority party candidates may win more votes than less popular majority-party candidates.

Assume the following vote totals in a 100,000-voter, three-seat MMD, limited single-vote election in which the voters vote sixty-five percent Republican, thirty-five percent Democratic:

- Candidate A (R)   35,000 votes
- Candidate B (R)   15,000 votes
- Candidate C (R)   15,000 votes
- Candidate D (D)   17,000 votes
- Candidate E (D)   17,000 votes
- Candidate F (D)   1,000 votes

Candidates A, D, and E—two Democrats and a Republican—would win seats. That does not track the partisan lean of voters. Conversely, the concern for voters in the minority party is the need to coordinate to ensure they do not split votes among too many candidates and lose all representation in the process.[140]

The primary value of MMD (with limited voting) is in giving a political minority the ability to elect a representative of choice. In a jurisdiction with politically polarized voting in which a political minority has virtually no ability to elect a representative in an SMD system, the ability to elect a representative in a multimember

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140. *See id.* at 987.

system may energize the political minority to become more engaged.

As statewide races from the last few years suggest, there are pockets of Democratic support in deep-red rural areas. The most recent Virginia General Assembly races suggest the same. In contested State Senate races in 2019, Democrats (or Independents) in rural areas demonstrated a level of support that might allow them to elect a candidate of choice if Virginia's electoral systems were diversified.[141] The same was true in the 2021 House of Delegates races.[142] Those results suggest that with an attractive candidate, political minorities in rural Virginia might be able to win in MMDs.[143]

A drawback of representation under an MMD system is the diffusion of representation that accompanies it due to multiplicity of representatives.[144] That may be a problem for the political majority, who may not know to which representative to turn. It is not a problem for the political minority that might not have a dedicated representative in an SMD system but might have a single representative in an MMD system.

B. *Ranked Choice Voting*

1. The Process

RCV determines an election's winner based on an electorate's overall preferences for candidates rather than based solely on the number of first-place votes a candidate receives. It is not new.[145]

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141. *See 2019 November General*, VA. DEP'T. OF ELECTIONS (Nov. 18, 2019, 5:34 PM), https://results.elections.virginia.gov/vaelections/2019%20November%20General/Site/Gener alAssembly.html [https://perma.cc/9LV8-YFTR].

142. *See 2021 November General*, VA. DEP'T. OF ELECTIONS (Dec. 16, 2021, 3:28 PM), https://results.elections.virginia.gov/vaelections/2021%20November%20General/Site/Gener alAssembly.html [https://perma.cc/TD2D-UBYB].

143. This is consistent across the rural United States. Scala & Johnson, *supra* note 29, at 164 ("However, the Republican Party's dominance in rural America has not been uniform. Pockets of relative Democratic strength have emerged in areas dominated by the 'new rural' economy of amenities and recreation.").

144. *See* Chambers, *supra* note 42, at 178 ("Under non-districted systems, voters cannot be certain who champions their interests (i.e,. [sic] who is their representative), and representatives cannot be certain whose interests to champion (i.e., who are their constituents).").

145. *See* Pildes & Parsons, *supra* note 14, at 1784 ("Developed in the mid-1800s, RCV— also known as 'instant-runoff voting,' 'preferential voting,' or the 'alternative vote'—allows voters to rank the candidates running for office in order of preference rather than limiting

RCV allows voters to rank multiple candidates for whom they are willing to vote, allowing their lower-ranked candidates to receive their vote if their higher-ranked candidates are removed from consideration during the RCV tabulation process.[146] Rather than allow a candidate to win with a small proportion of votes, as FPTP systems do, RCV requires a winning candidate receive a certain percentage of the available votes cast depending on the number of positions to be filled. For example, in an election for an SMD, the winning candidate in an RCV election must receive fifty percent plus one of the valid, non-exhausted ballots during a tabulation round. Ballots become exhausted when all candidates listed on a ballot have been eliminated in successive vote tabulation rounds. RCV is designed to guarantee the winning candidate has a significant level of support from the electorate. That encourages candidates to seek support from all parts of the electorate, even from political minorities. That may lessen polarization and allow political minorities to influence an RCV election in a way they could not influence an FPTP election.[147]

Some argue RCV is confusing; it is not. Some voters may be confused by how votes are tallied, but RCV voting is not confusing.[148] The voter is asked to list the candidates for whom the voter is willing to vote based on the voter's preferences. Jurisdictions may limit the number of candidates a voter can rank.[149] If a voter were given a list of several ice cream flavors and asked to rank order their preferred flavors, they could likely do so. Some voters might decline to list any flavors because they do not like ice cream. Other voters

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voters to a single choice."); *see also* Richie & Spencer, *supra* note 78, at 1010 (noting that nearly two-dozen cities adopted RCV in the early twentieth century).

146. VA. CODE ANN. § 24.2-673.1(A) (Cum. Supp. 2022) ("Ranked choice voting' means a method of casting and tabulating votes in which (i) voters rank candidates in order of preference, (ii) tabulation proceeds in rounds such that in each of round either a candidate or candidates are elected or the last-place candidate is defeated, (iii) votes for voters' next-ranked candidates are transferred from elected or defeated candidates, and (iv) tabulation ends when the number of candidates elected equals the number of offices to be filled."); *see also* Pildes & Parsons, *supra* note 14, at 1775 (explaining the mechanics of RCV).

147. *See* Pildes & Parsons, *supra* note 14, at 1775 ("In our era of hyperpolarized and toxic politics, political reformers are searching for changes to our electoral processes that would encourage a less divisive style of elections and governance. Reformers argue that among the most promising would be a shift to RCV.").

148. *See* Steven J. Mulroy, *The Great Unskewing: Remedying Structural Bias in U.S. Elections*, 58 U. LOUISVILLE L. REV. 101, 129 (2019) (noting voters are not typically confused by RCV).

149. Alaska allows the voter to rank up to five candidates in a single race. *See Alaska Better Elections Implementation*, ALASKA DIV. OF ELECTIONS, https://www.elections.alaska.gov/RCV.php [https://perma.cc/8WN7-ZGX5].

might list a few flavors because they do not like many of the available flavors. Yet other voters might list nearly as many flavors as were presented because they would favor a barely preferred flavor of ice cream to nothing. Tabulating the votes under an RCV system is like deciding which single ice cream flavor will be served at a party after getting the rank order preferences from all the party attendees.

The tabulation of votes in an RCV election proceeds in rounds. In the first round, each voter's first-place votes are counted. If the candidate who wins the largest number of votes in round one has more than fifty percent of the votes, that candidate wins. If the candidate with the most votes garners fifty percent of the votes or fewer, the candidate with the fewest votes is eliminated. A voter's vote for their most preferred (i.e., first place) candidate will be counted for that candidate until the candidate is eliminated from consideration. The votes for the candidate with the fewest first-place votes will be reallocated to the second-place candidate on those ballots. Votes that have no second-place candidate are exhausted, set aside, and no longer counted for the purpose of determining if a candidate has reached the fifty-percent-plus-one vote threshold.[150] The process continues until a candidate has reached the fifty-percent-plus-one vote threshold of non-exhausted ballots. By eliminating the last place finisher in each round until the winner meets the threshold for victory, RCV eliminates spoilers and splitters.[151]

Some argue RCV ensures only candidates with majority support win SMD elections.[152] That is not quite accurate. Due to the existence of exhausted ballots, a winning candidate may win with a majority of *non-exhausted* ballots counted in the winning round, while only winning a plurality of *all* ballots cast in the initial round. Indeed, that occurred in Alaska's 2022 special congressional election. United States Representative Mary Peltola won the election, but she did not win the support of a majority of those who voted in

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150.   Pildes & Parsons, *supra* note 14, at 1786.

151.   *Id.*

152.   *See*, *e.g.*, Richie et al., *supra* note 40, at 158 ("Using RCV in a presidential election determined by the national popular vote would generate yet more progress by replacing a plurality rule with majority rule; RCV ensures majority rule by correcting the 'vote-splitting' dynamic that occurs when there are more than two candidates for President.").

election.[153] In the first round, 188,582 valid ballots were cast, listing Peltola (75,799), Sarah Palin (58,973), or Nick Begich (53,810) as a first choice.[154] Begich was the last-place finisher in the first round and was eliminated from consideration. Begich's first-choice ballots were redistributed based on the second choice listed on those ballots. Palin added 27,053 of Begich's votes, Peltola added 15,467 of Begich's votes, and more than 11,000 Begich voters did not list Peltola or Palin as a second choice. After the redistribution, Peltola won with 91,266 votes and Palin lost with 86,026 votes. Peltola won some measure of support from 48.4% (91,266 of 188,582) of those who cast a valid vote in the initial round of the election.[155] In Alaska's regular November 2022 election, Representative Peltola won with a majority measure of support of those who cast a ballot in the initial round of the election.[156]

Exhausted ballots may not ultimately determine who is elected. However, they provide important information about the preferences of the voters. The ballots indicate where support for various candidates diminishes. They may suggest frustration with many or most candidates on the ballot.[157] If a significant number or proportion of voters are only willing to vote for one or two candidates on a ballot with many candidates, an opportunity may exist for a candidate who appeals to those voters to be a voice for those people in the next election cycle. In the alternative, the candidate who wins may wish to consider whether exhausted ballots reflect disillusion with that candidate. The winning candidate can use that as an opportunity to reach out to those voters, who are part of the candidate's constituency.

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153.   STATE OF ALASKA, 2022 SPECIAL GENERAL ELECTION RCV TABULATION (2022), https://www.elections.alaska.gov/results/22SSPG/RcvDetailedReport.pdf [https://perma.cc/JBE3-447C].

154.   *Id.*

155.   RCV may have done exactly what it was designed to do: eliminate those who play heavily to their base. *See* JIMMY BALSER, CONG. RSCH. SERV., LSB10837, RANKED-CHOICE VOTING: LEGAL CHALLENGES AND CONSIDERATIONS FOR CONGRESS 2 (2022) ("Proponents of RCV claim that other election systems, such as SCV elections with plurality thresholds, overly benefit candidates with a strong core of support, or a 'base,' by allowing those candidates to win with only a plurality of voter support even if they are strongly opposed by the rest of the electorate.").

156.   STATE OF ALASKA, RCV DETAILED REPORT: GENERAL ELECTION 2 (2022), https://www.elections.alaska.gov/results/22GENR/US%20REP.pdf [https://perma.cc/FC29-4JK2].

157.   Exhausted ballots may be a type of protest vote. *See* Hayden, *supra* note 41, at 593 ("Alienated voters may also make their intentions clear by actually showing up at the polls and casting a protest vote.").

Some may argue second-place (or third-place) votes are fundamentally different from first-place votes and should not decide an election. Second-place votes may suggest a lack of positive intensity for the winning candidate. A voter's preference for their second-place candidate may not match the intensity of their preference for their first-place candidate. However, a voter's preference for their second-place candidate may outstrip another voter's preference for their first-place candidate.[158] The key issue is whether an electorate believes a second-choice vote should help decide an election, regardless of the intensity it reflects. If so, second-place votes should help decide an election. Those votes are tiebreakers when a majority preference for a candidate does not exist. They represent preferences that may be relevant to how well a constituency will be served or will feel served during an elected official's term.

2. RCV's Possible Effects

The winner of an FPTP election may also win the same election if decided by RCV, but that will not invariably be the case. The highest vote-getter after the first round of balloting may not always win an RCV election. One of the purposes of RCV is to allow a voter to help their second-choice candidate to win. Competitive candidates may need to think about how to become the second-place choice of other candidates' supporters, possibly changing the nature of campaigning.[159] The need to appeal to a majority of voters may lead to campaigning that is more cooperative and less incendiary. It may prompt more attempts to connect with a larger group of voters. It may also yield candidates who are likely to support the policy preferences of voters who list them second. That could lead to legislators who are willing to consider and support the interests of political or racial minority voters they otherwise could ignore.

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158. *See* Grant M. Hayden, *The False Promise of One Person, One Vote*, 102 MICH. L. REV. 213, 236–51 (2003) (discussing the difficulty of interpersonal utility comparisons in the context of voting).

159. BALSER, *supra* note 154, at 2 ("Proponents also argue that RCV creates strong incentives for candidates to appeal to voters who may cast them as their second or third choice, thereby encouraging the election of officials by a broader coalition of voters and reducing partisanship."); Pildes & Parsons, *supra* note 14, at 1775 ("Because RCV creates strong incentives for candidates to appeal beyond their base of 'first-choice' support to voters who might still rank them second or third, RCV is believed to encourage greater coalition-building, less divisive campaigning, and a larger number of elected officials that appeal to a broader array of voters.").

More cooperative campaigning may lead to better governing, as incumbents think about how to keep the populace sufficiently satisfied to win RCV elections in the future.

RCV can help a political minority affect who is elected without necessarily giving the minority a strong chance to elect their candidate of choice.[160] Nonetheless, the ability to vote for a candidate a voter strongly supports and to vote for a candidate the voter is willing to accept if the voter's most preferred candidate does not win may be of value to a voter, possibly increasing election turnout.[161] Even modest increased turnout could be important for at least three reasons. First, increased turnout suggests lower apathy among the voters.[162] Lessened apathy may lead to greater civic engagement between elections. Second, the higher the turnout the better an elected official may be able to understand the electorate. Third, increased turnout may encourage elected officials to listen to a larger proportion of citizens. The more relevant a broader proportion of the electorate becomes, the more likely an incumbent may be to listen to that broader group of citizens.

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160. RCV can satisfy a greater number of voters than plurality voting. *See* Richie & Spencer, *supra*, note 78, at 983 ("Choice voting will maximize the number of voters who elect one of their favorite candidates under two conditions: (1) when there are candidates who reflect the diversity of views within a jurisdiction; and (2) when voters rank candidates reflecting their views in order of preference."). That may minimize the so-called 'wasted vote' problem that deems a vote "wasted" when it is cast for a losing candidate, or a vote that increases a winning candidate's margin of victory. *See* Gill v. Whitford, 138 S. Ct. 1916, 1924 (2018) (discussing wasted votes). The nomenclature of a wasted vote is misplaced if a representative's margin of victory is relevant to how a representative governs.

161. Whether RCV increases turnout significantly is not clear. *Compare* Brandon Marc Draper, *No More Half Measures: The Case for Compulsory Voting in United States Elections*, 13 ELON L. REV. 147, 171–74 (2020) (arguing RCV to be coupled with compulsory voting laws to increase turnout), *and* Courtney L. Juelich & Joseph A. Coll, *Ranked Choice Voting and Youth Voter Turnout: The Roles of Campaign Civility and Candidate Contact*, 9 POL. & GOVERNANCE 319, 319–31 (2021) (concluding increased voter contact in RCV systems increases youth voter turnout), *with* Gordon Merrick & Anders Newbury, *Proactively Protecting Vermont's Participatory Democracy: Reforms to Election Structure, Campaign Finance, and Voter Engagement*, 45 VT. L. REV. 481, 493 (2021) (providing examples of RCV independently increasing turnout in municipal elections), *and* Richie et al., *supra* note 40, at 157 ("Keeping voter choice limited will make it harder to draw voters in who are already disaffected by their choices. Notably, cities with RCV have seen turnout increase in recent mayoral elections across a variety of contexts.").

162. Voters may vote more often if they are not alienated. Hayden, *supra* note 41, at 593 ("Alienated voters may abstain in different ways. In many cases, they may simply fail to show up at the polls on election day.").

3. Primary Elections

The role of primary elections may change in an RCV system in rural Virginia. In many rural areas, for practical purposes, the Republican primary is the general election. RCV may expand the effective electorate from the majority party's primary electorate to the general electorate, lessen the importance of party lines, and render primary elections unnecessary. Primaries could be restructured as open primaries with the top finishers creating the field for the general election.[163] RCV in an open primary would help winnow the field to the strongest contenders. RCV in the general election would choose the consensus winner. Conversely, the general election could be a restricted-field RCV election filled with party primary winners and independents who could meet a threshold to secure a spot on the general election ballot. Political parties would presumably prefer to select a candidate who could win in the RCV general election. That could lead the party's voters to choose a more moderate candidate for the general election than the base might prefer. That candidate might be more willing to consider the interests of the political minority.

RCV may not change the party of the representative selected. However, it may change who is selected and their partisan profile. RCV may encourage different candidates to run or may encourage the incumbents to govern differently. RCV may not always lead to moderation and the election of the moderate candidate who is thought most likely to represent their entire constituency, but it can.[164]

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163.   This is a qualifying or "jungle" primary. *See* David A. Hopkins, *Can American Political Parties Disagree but Still Get Along?*, 51 TULSA L. REV. 349, 351 n.7 (2016).

164.   Pildes & Parsons, *supra* note 14, at 1785 ("This is not to say that RCV will always encourage or incentivize *ideological* moderation. Whether a progressive, moderate, or conservative candidate wins is a function of coalition-building, and 'middle-of-the-road' policies will not always be the best way to create a majority coalition. In fact, in elections in which a spoiler, minor-party candidate would take enough votes away from an ideologically extreme major-party candidate to give the race to a moderate candidate from the other major party, the use of RCV might bolster the prospects of that more extreme candidate.").

4. Single Transferable Vote

When RCV and MMD are used in tandem, the result is the single transferable vote ("STV") system.[165] The choices voters make are the same. The number of votes a winning candidate needs to win under an STV system is no different than under MMD without RCV. The only difference relates to the tabulation of votes, which is more complicated. Once a winning candidate reaches the threshold of votes necessary to win, STV considers what to do with the "excess votes" a winning candidate has received.[166] The election process allocates the candidate's excess votes to other candidates based on the proportion of second-place votes that candidate's voters gave to other candidates. Assume a candidate needs 251 votes to win a seat in an MMD election. If that candidate wins 300 votes, she has 49 excess votes that will be reallocated to other candidates. In successive rounds, the winning candidate's excess votes and the votes of the candidate who has finished last in the round are divided among the remaining candidates.[167] The process continues until all seats are filled by candidates who have reached the required threshold of votes. STV obviates the need for the parties to organize their voters, as might be necessary to avoid splitting in an MMD race that uses FPTP tabulation.[168] Consequently, STV mimics proportional representation, limiting the support a majority party can receive in a highly polarized setting. The political minority's representation may also be capped, but it is higher than it would have been in an SMD system in which the minority party might lose every district's election.

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165. *See* VA. CODE ANN. §24.2-673.1 (Cum. Supp. 2022) ("'Ranked choice voting' is known as 'instant runoff voting' when electing a single office and 'single transferable vote' when electing multiple offices.").

166. *See* Diller, *supra* note 31, at 175–76 (discussing STV).

167. *See* Jeffrey C. O'Neill, *Everything That Can Be Counted Does Not Necessarily Count: The Right to Vote and the Choice of a Voting System*, 2006 MICH. ST. L. REV. 327, 336–37 (2006).

168. *See* Pildes & Parsons, *supra* note 14, at 1781 (2021) (discussing splitting); Richie & Spencer, *supra* note 78, at 987 ("[C]hoice voting has worked well in complex jurisdictions with diverse racial minority communities, where the potential for split votes would otherwise be more likely.").

III. THE GENERAL ASSEMBLY, ELECTORAL DIVERSITY, AND CIVIC PARTICIPATION

Electoral diversity can foster a more responsive government that is more likely to address the ills of all people than FPTP, SMD systems. MMD can help political and racial minorities elect their candidates of choice. RCV can help political minorities influence who is elected without necessarily allowing them to elect their candidate of choice. Both MMD and RCV make elections more relevant to political minorities in rural areas dominated by one party, incentivizing those local political minorities to fully engage in the political process. The General Assembly could be restructured to help facilitate this change.

A. *Multimember Districting and the General Assembly*

The General Assembly could convert some of its SMDs into limited voting MMDs. Currently, the General Assembly consists of forty state senate SMDs and 100 house SMDs. Virginia could be divided into twenty electoral districts. Each district would be an MMD electing two senators and five delegates. All five delegates could be elected at-large in each electoral district, or the districts could be subdivided so that one subdistrict elects two delegates, and one subdistrict elects three delegates.[169] The approach is unconventional, but not unknown in Virginia.[170]

Any plan incorporating MMD would need to survive federal and state voting rights regulation.[171] Meeting such scrutiny requires

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169.   These might be reasonably-sized MMDs. *See* Richie & Spencer, *supra* note 78, at 1002 ("The application of choice voting to state legislative elections and congressional elections should generally take the form of multi-member districts composed of between three and five members each."). Some states have smaller MMDs. *See* MD. CONST. art. III, § 2.

170.   *See* Zach Armstrong, *Supervisors Vote for County to Continue With Two Multi-Member Districts*, PRINCE GEORGE J. (Oct. 12, 2021), https://www.theprincegeorgejournal.com/news/supervisors-vote-for-county-to-continue-with-two-multi-member-districts/article_5b50cbc-26c5-11ec-b599-e36a10b31871.html [https://perma.cc/ T7HQ-26CM] (discussing Prince George County Board of Supervisors which has five members chosen from one two-representative district and one three-representative district).

171.   Meeting federal VRA scrutiny may become easier over time as the Supreme Court of the United States appears to be lessening VRA section 2 scrutiny. *See* Brnovich v. Democratic National Committee, 141 S. Ct. 2321, 2346–50 (2021) (holding that no section 2 violation occurs if a voting law is facially neutral, it furthers a compelling state interest, and its disparate burden on minority voters is small); *see also* Chambers, *supra* note 51, at 258–60, 262–63 (discussing the Court's section 2 redistricting jurisprudence between 2010 and 2020). The Court may be poised to eliminate significant protections for minority groups in

the MMD not to lessen the opportunity of racial minorities to elect their representatives of choice.[172] Expanding MMD and RCV as suggested is intended to provide political and racial minorities a greater chance to elect representatives of choice and influence elections than they would have in an SMD scheme. Two-member districts allow political minorities with 33.4% support to elect a representative, three-member districts allow political minorities with 25.1% support to elect a representative, and five-member districts allow political minorities with 16.7% support to elect a representative. If parts of the plan did not meet voting rights scrutiny, any part of the districting plan could be modified to meet objections.[173] Any electoral district could be restructured to provide single-member electoral or delegate districts inside the framework of the twenty-electoral district scheme, if required by voting rights statutes.

The plan has two additional virtues related to redistricting. First, the plan is a nested plan, in which the delegate districts are embedded in larger senatorial districts. That is a feature of the 2021 General Assembly legislative maps the Supreme Court of Virginia approved in the wake of the post-2020 census redistricting effort.[174] Second, the plan would likely decrease gerrymandering, as fewer district lines would need to be drawn. The dispute over where the lines should be drawn might be contentious.[175] However, with fewer lines and larger districts, disagreements about moving small bits of land from one district to another would be less likely to occur.

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the redistricting context in *Merrill v. Milligan*, which the Court heard this term. *See* No. 21-1086 (U.S. argued Oct. 4, 2022).

172.   *See* Voting Rights Act of 1965 § 2, 52 U.S.C. § 10301; VA. CODE ANN. § 24.2-126 (Cum. Supp. 2022) (establishing the state law equivalent of section 2).

173.   That is the approach of the (Federal) Fair Representation Act, which would require MMD and RCV for congressional districts. *See* Diller, *supra* note 31, at 170–73.

174.   While this is a feature of the maps, the special masters did not "adhere to this standard religiously" in either the draft or final maps due to other competing criteria. BERNARD GROFMAN & SEAN TRENDE, SPECIAL MASTERS' PRELIMINARY MEMORANDUM 10 (2021), https://www.vacourts.gov/courts/scv/districting/memorandum_re_va_redistricting_2021.pdf [https://perma.cc/YM28-CCYH] (explaining the nesting concept); BERNARD GROFMAN & SEAN TRENDE, SPECIAL MASTERS' FINAL MEMORANDUM 6 (2021), https://www.vacourts.gov/courts/scv/districting/2021_virginia_redistricting_memo.pdf [https://perma.cc/Y5ZX-N9Y4]; *see also In re* Decennial Redistricting, 300 Va. 379, 380 (2021) (approving the special masters' Final Redistricting Maps).

175.   Drawing a small number of lines may be fraught. Virginia need only draw eleven congressional districts, many fewer than state house or senate districts. Nonetheless, congressional redistricting was as contentious as state legislative redistricting in the wake of the 2010 census. *See* Chambers, *supra* note 51, at 248–54.

Well before the post-2020 census redistricting, the General Assembly signaled it wanted to avoid partisanship and partisan gerrymandering in the redistricting process.[176] A deemphasis on drawing lines to construct so many SMDs might help lessen the partisanship. That is particularly important given that the Virginia Redistricting Commission was unable to produce maps during their redistricting period, requiring special masters to draw legislative maps for approval by the Supreme Court of Virginia.[177] As of today, there is little reason to believe the redistricting process will proceed any differently in 2031 than it did in 2021.

B. *Civic Engagement Between Elections*

With the potential of a stronger connection to a representative who supports its interests, a political minority may have its interests fully considered under an MMD/RCV/STV system. That may lead to stronger civic engagement between elections, as the political minority may hold their representatives responsible for their actions in real time.[178] In that political atmosphere, incumbents may be more responsive and may consider their next election more closely as they are governing. In theory, there could be a drawback to expanding the use of MMD. Adopting MMD to guarantee explicit representation for the political minority may suggest a representative can reasonably ignore part of the representative's constituency because another representative is thought to represent them. The concern is theoretical because the expansion of MMD may be necessary precisely because representatives may already be ignoring part of their constituency. If the collection of representatives selected in the MMDs are fully representing the political majority and the political minority, the MMD system has worked as planned.

The pool of people considering a run for office might broaden for the better. A potential candidate who knows 25.1% of the vote will garner a seat in a three-representative MMD or 33.4% of the vote will garner a seat in a two-representative MMD may be more likely

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176. *See* Henry L. Chambers, Jr., *The Fight Over the Virginia Redistricting Commission*, 24 RICH. PUB. INT. L. REV. 81, 82–86 (2021) (discussing the origin of the Virginia Redistricting Commission).

177. Mirshahi, *supra* note 96.

178. *See* Gould, *supra* note 33, at 790–91 (noting relationship between legislator and constituents is one of accountability).

to run than if the candidate faced an almost certain loss in a SMD. MMD and RCV should encourage parties to run candidates in every election with no uncontested General Assembly seats in future elections.

Expanding the use of MMD and RCV in the General Assembly could encourage its broader adoption at the local level, possibly changing the composition of boards of supervisors, city councils, and school boards. Civic involvement may increase regarding local issues. Though local boards may already be hotbeds of civic involvement, additional productive involvement may be beneficial. Pushing legislative bodies to be more accountable and responsive may be the essence of democratic engagement.

C. *Expanding Multimember Districting and Ranked-Choice Voting*

The benefits of expanding MMD and RCV are fairly clear. Expanding MMD and RCV should increase the quality of representation for political or racial minorities. It may increase turnout, civic engagement, and demands for accountability from representatives, as voters expect to be heard. However, expanding MMD and RCV is fraught and may not occur. The expansion would provide representation and power to groups that have been powerless.

The ceding of power could cause resistance to expanding electoral diversity at the General Assembly or at the local level. Political minorities have lost because they often are—by definition—numerical minorities in an SMD system. Expanding MMD and RCV in specific jurisdictions might require the political majority to cede some power to the political minority, leading some officeholders to lose their seats. That makes expansion unlikely in the absence of a public groundswell. Even with a groundswell at the General Assembly level, concerns regarding unfairness may attend the choice to install MMD in some areas but not others. If a majority party imposed MMD in an area where it had no representation, but declined to do so in areas where it was dominant, problems would arise. Those expanding electoral diversity would need to be careful.[179]

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179.   A generalized concern about mixing SMD and MMD in the General Assembly can be dismissed. The General Assembly had a combination of SMDs and MMDs for years before the DOJ objected to MMDs after the post-1980 census redistricting. *See infra* notes 127–29

The implementation of MMD and RCV could be controversial, but both are authorized under Virginia law. That suggests Virginians are willing to accept electoral diversity when and where useful. When limited voting is a part of the MMD system, accepting that form of electoral diversity could rest on the desire to have the interests of localized political minorities represented in the relevant legislative body. If Virginians do not share that desire, the expansion of MMD and RCV is less likely to occur in the General Assembly or in local legislative elections.

The General Assembly or a local jurisdiction that considers expanding MMD would need to determine how large a political or racial minority must be to deserve dedicated representation. The decision would govern the size of the MMDs. Explicit questions the political majority must ask regarding expanding electoral diversity in the General Assembly include: What partisan balance in the General Assembly is "fair"? What ideas should be represented in the state legislature that have not been represented? Local jurisdictions contemplating expanding MMD and RCV would need to ask the same questions regarding their jurisdictions. The answers are unclear and require extensive civic engagement. The discussion should start now.

CONCLUSION

Virginia has a history of declining to represent the interests of some of its citizens;[180] it surely is not alone.[181] Whether Virginians want to see the interests of all Virginians represented is unclear, but they should. The representation of the interests of political minorities could raise the quality of legislation from the General Assembly. The views of representatives who have considered the interests of view of rural political and racial minorities can lead to

and accompanying text. Indeed, the Code of Virginia allows choosing a single legislature using SMD and MMD. VA. CODE ANN. §24.2-304.1(A) (Cum. Supp. 2022); *see also* Holloway v. City of Virginia Beach, 42 F.4th 266, 271–73 (4th Cir. 2022) (discussing Virginia Beach city council which had been elected exclusively through at-large voting but must now be conducted through a combination of at-large and districted voting due to Code of Virginia section 24.2-222(A) (Cum. Supp. 2021)).

180. *See* Earls, et al., *supra* note 6, at 770–77 (noting the litany of ways Virginia jurisdictions attempted to use electoral systems reforms to harm African American voters).

181. *See* BROWN-DEAN ET AL., *supra* note 8, at 23 ("When government shapes policy, it is more likely to ignore black voices than the voices of any other racial or ethnic group. That gap may be small, but given the high stakes, any inequality in policy responsiveness is worth highlighting and eventually addressing.").

legislation that is not only good for some Virginians, but good for all Virginians. When the voices of political minorities are unrepresented and unheard, they cannot help shape legislation and make it better.

If Virginians want the interests of political minorities represented, mechanisms already allowed in Virginia law—MMD and RCV—can facilitate that. Precisely where, when, and how to implement diverse electoral structures to give political minorities influence in the election of their representatives or the power to elect their representative of choice may be controversial. The switch to an MMD plan, an RCV or an STV plan may meet more resistance in some areas than in others.

This Article focuses on the concerns of political and racial minorities in rural Virginia, who tend to support Democratic candidates. However, two considerations should remain in mind. First, electoral diversity considers rural interests that may not be represented in Virginia's legislative bodies. Those are the interests of political minorities broadly defined. Political minorities are not party-specific. They may include racial minorities, members of various political parties, other disaffected issue-based groups, or some combination of them.[182] Second, the introduction of electoral diversity can be used in heavily Republican rural areas to help Democratic voters whose interests may have been ignored, in heavily Democratic urban areas to help Republican voters whose interests may have been ignored, or in any other area where the interests of a local political minority have been ignored.

If Virginians want more representation for the interests of political and racial minorities in rural Virginia, the General Assembly can use existing law to do so. Providing that representation could be a first step in aggressively seeking to remedy disparities in rural areas.[183] Experimentation with electoral rules and systems to serve

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182.   There can be an interesting relationship between race and partisan affiliation in some elections. *See* M.V. Hood III, Quentin Kidd & Irwin L. Morris, *Race and the Tea Party in the Old Dominion: Split-Ticket Voting in the 2013 Virginia Elections*, 48 PS: POL. SCI. & POL. 107, 113 (2015) (suggesting partisan affiliation may affect voting more than racial animus or prejudice in some elections).

183.   *See* Lichter & Ziliak, *supra* note 9, at 22 ("We need new approaches to social problems and policies that are spatially inclusive—that recognize that urban-centric approaches may by definition inadvertently miss or downplay the importance of topics that are inextricably linked to the health and well-being of rural America.").

our democratic values is not new.[184] If there is an appetite to en-
sure the interests of political minorities in rural Virginia are heard,
a change to the dominant FPTP, SMD structure of Virginia elec-
tions could make a difference.

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184.   *See* Pildes & Parsons, *supra* note 14, at 1777 ("Since the nation's beginning, Amer-
icans have experimented with the best ways of structuring the democratic process to meet
the values and concerns of their era. Whether those experiments have meant requiring par-
ties to use primary elections to choose their nominees, or the best way to finance campaigns,
or what policies are appropriate for determining how candidates become eligible to get on
the ballot, we have chosen to structure our elections in a variety of ways as our conception
of democracy has evolved.").