

## *Chapter 21*

# *Reform on the ground in Lowell, MA*

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### CHAPTER SUMMARY

Where you vote matters, but the way you vote matters too. This is a case study of litigation using a novel coalition claim to change the system of election in Lowell, MA.

## 1 INTRODUCTION: THE VRA AS A TOOL

The federal Voting Rights Act of 1965 (VRA) is a powerful tool for advocacy and litigation. It allows communities of color and voters of color to challenge a broad range of systemic and structural practices that deny or abridge their right to vote. Although the Supreme Court has recently limited certain aspects of the VRA, many of its provisions remain as critical to the racial justice struggle as they have been since the VRA's passage in 1965.

Due to its breadth and flexibility, the VRA is an especially potent tool for challenging structural mechanisms that operate to keep an entrenched “old guard” in office, especially in communities that are increasingly diversifying and experiencing demographic transitions. In particular, the VRA has often been used to successfully challenge “at-large” electoral systems that dilute the right to vote.

This chapter examines the continuing relevance of the VRA, in the context of a recent challenge to the at-large electoral system of Lowell, Massachusetts, one of the largest cities in New England.

The VRA was enacted at the height of the civil rights movement in the 1960s. It has been rightly called one of the “crown jewels” of civil rights laws passed during this era. The VRA broadly prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” Two features are evident from the text of the law. First, the VRA is broad in its reach. Overt practices that have historically been used to limit the right to vote of communities of color – such as poll taxes or literacy tests – are clearly prohibited. But the Act reaches further than that: it extends to any practice or procedure that limits the right to vote on account of race, whether that is a discrete voting requirement or a broader structural challenge. Moreover, the obstacle need not impose an outright ban on voting; any “abridgement” of the right to vote is also vulnerable under the VRA.

Second—and perhaps most importantly—the law focuses on the *impact* of such obstacles, not the *intent* behind them. The VRA outlaws practices that “result in” denial or abridgement of the right to vote, whether or not such practices are imposed because of an intent to discriminate against communities of color. This distinction between “intent” and “impact” is critical in civil rights law. Proving intentional discrimination is notoriously difficult – and is made all the more challenging when the defendant is a governmental entity. Since governmental entities are composed of individual actors, who each may have a wide range of motivations, attributing “intent” (much less a nefarious one) can be a daunting task. Moreover, the search for motive often makes little sense from a practical standpoint: whether or not a governmental policy or practice is intentionally discriminatory, the on-the-ground harm to those affected is often the same.

For these and other reasons, civil rights advocates usually prefer to focus not on what a government entity “intends,” but rather on the “disparate impact” of governmental action. However, in many areas of law (outside of the VRA), federal courts over the years have cut back on the ability of civil rights plaintiffs to do so. The U.S. Supreme Court, for example, has held that disparate impact is insufficient to prove certain violations of the Equal Protection Clause of the U.S. Constitution. Instead, only intentional discrimination will suffice.

The VRA, however, stands as one of the remaining areas of law that does *not* require plaintiffs to prove intent. As explained further below, analysis under the VRA focuses instead on the impact of the voting practice being challenged. Even following a recent U.S. Supreme Court decision that weakened other provisions in the VRA, this provision remains intact.<sup>1</sup>

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<sup>1</sup>In the 2013 *Shelby County* case, the Supreme Court struck down provisions of the VRA that required certain state and local jurisdictions to obtain federal “pre-clearance” before making changes to their voting procedures. Although this ruling essentially gutted the law as it pertains to federal pre-clearance (Section 5 of the VRA), it did not affect the provision of the VRA that allows for affirmative challenges to voting rights practices (Section 2 of the VRA). For a more thorough introduction to the VRA and its case law, see Chapter 6 and Chapter 7

## 2 AT-LARGE ELECTORAL SYSTEMS: A PRIME TARGET

One of the most common VRA challenges over the decades has been to “at-large” electoral systems. In an at-large system, every voter in the jurisdiction votes for all open seats. This can be contrasted with district or ward elections, in which voters cast their vote only for the candidates running in their particular district or ward.

The problem with at-large electoral systems is that they have the potential to dilute the vote of communities of color, particularly if the majority votes as a cohesive bloc and in opposition to those in the minority. When that happens, 51% of the voters can capture 100% of the seats in 100% of the elections, and effectively leave the minority with no voice at all.

To give an example outside the electoral context, imagine a family with five kids that has “TV night” at home every Friday night. Three of the children always prefer sci-fi movies, while two always prefer cartoons. Most parents who want to keep the peace and come up with a fair system would devise a schedule of alternating sci-fi movies and cartoons from week to week (perhaps with slightly more sci-fi movies to reflect the 3-2 split). But what sensible parents would not do would be to tell the kids: “We’re going to vote each week, and we’ll watch whatever gets the most votes that week.” Because in that case, the family would end up watching sci-fi movies 52 weeks a year. The cartoon fans would rightly feel as if they had no say in the matter. They might check out and stop voting altogether.

For this reason, at-large elections have been banned for federal Congressional seats for years. In 1967, a law was enacted requiring that members of the House of Representatives must be elected by district (in states with more than one Representative). Today, we think of this as natural. A single state, for example, may have 20 Representatives in Congress. But all residents of the state do not vote for all 20 of these Representatives. Rather, the state is split up into 20 districts and residents vote for their own Representative.

But at the local level, at-large elections persist. Because of the potential for inequity, however, federal courts have often found them to violate the VRA. Over the years, guided by the U.S. Supreme Court, federal courts have developed a framework for analyzing such claims. To prevail on a Section 2 claim, Plaintiffs must first satisfy what is known as the “*Gingles* preconditions” (after the name of a U.S. Supreme Court case) by showing that: (1) the minority group is “sufficiently large and geographically compact to constitute a majority in a single-member district;” (2) the minority group is “politically cohesive” in that it tends to vote together in support of particular candidates; and (3) the majority votes “sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate[s].”

Demonstrating the *Gingles* preconditions is largely a map-drawing and mathematical exercise based on publicly available election and U.S. Census Bureau data. The first precondition is proven by demonstrating, typically through expert demographers, that the jurisdiction can be divided into districts where the plaintiff group comprises a majority in at least one district. The second and third preconditions

require statistical evidence detailing the voting patterns of communities of color in past elections typically based on publicly available population data and election results.

If these three *Gingles* preconditions are satisfied, plaintiffs must then show that, under the “totality of the circumstances,” the minority group has less opportunity than other members of the electorate to elect representatives of its choice. Courts evaluate the “totality of the circumstances” via what is known as the “Senate factors,” which include: any history of voting-related discrimination in the political subdivision; the extent of racially polarized voting within the political subdivision; whether voting practices or procedures—such as unusually large election districts—tend to enhance the opportunity for discrimination against the minority group; whether minority group members bear the effects of past discrimination in areas such as education, employment, and health; any lack of electoral success for members of the minority group; and whether elected officials are unresponsive to the particularized needs of the members of the minority group.

### 3     LOWELL, MASSACHUSETTS: A CASE STUDY

The potency of the VRA to challenge discriminatory at-large electoral systems, and the ways in which such cases can be proven, can best be illustrated by looking at a real-life example: federal litigation against the City of Lowell, Massachusetts. The authors’ organization, Lawyers for Civil Rights, represents a coalition of Asian-American and Latinx residents of Lowell who challenged the city’s at-large election system under Section 2 of the VRA.

#### 3.1   BACKGROUND

Lowell is a city of approximately 110,000 residents, located roughly 22 miles northwest of Boston. It is a richly diverse city. At the time the lawsuit was filed, in May 2017, the city was approximately 51% White — and on the cusp of becoming a minority-majority community — with more than 49% of Lowell’s residents identifying as people of color: 22% Asian-American, 18% Latinx, and 7% Black. A sizeable percentage of the Asian population has Cambodian roots, with many families having moved to Lowell in the 1980s and 1990s as refugees from Cambodia fleeing the Khmer Rouge and its killing fields. This growing and thriving Cambodian community is now the second largest in the United States. Today, Lowell continues to experience demographic transition with vibrant and dynamic Latinx and African populations.

Yet, the city’s elected bodies traditionally have not in any way reflected the community’s rich diversity. At the time the lawsuit was filed, Lowell’s City Council and School Committee were both virtually all-White, and had been for nearly their entire existence. Many qualified candidates of color had run over the years, but very few had been elected. In fact, only *four* candidates of color had *ever* been elected to the City Council. And only *one* person of color had *ever* been elected to

the School Committee, even though two-thirds of the children in the Lowell Public Schools are students of color.

The electoral system that had long been in place was a critical reason for this significant power imbalance and racial disparity: all nine City Councilors and all six School Committee members were elected at-large. The top nine and top six vote-getting candidates were elected to the City Council and School Committee respectively. Candidates did not need a majority of all votes cast to win a seat. With an active, unified, and predominantly White majority voting bloc representing approximately 51% of the city's population, all the winners could easily come from — and represent the interests of — one dominant community. This electoral system, with voting patterns that were profoundly racially polarized, suppressed people of color and diverse voices.

For example, in 2013, two Cambodian-American candidates ran for the Lowell City Council. Despite heavy support from Asian-American and Latinx voters alike, neither candidate won a seat on the City Council. Expert analysis of election results indicated that these two candidates were strongly favored by both Asian-American and Latinx voters above all other candidates, ranking as those voters' first- and second-choice candidates. In contrast, they were seventeenth and eighteenth — out of a total of eighteen candidates — among the predominantly White majority voting bloc. Year after year, the White voting bloc consistently elected all nine of its top candidates to the City Council effectively suppressing and diluting the votes of their diverse neighbors.

Interestingly, Lowell did not always use an at-large plurality voting system. From 1943 until 1957, Lowell employed proportional representation voting in municipal elections. In contrast to present-day Lowell, voters in this time period consistently elected a diverse City Council with representatives from the major ethnic groups living in the city at the time, including the Irish, French, Polish, and Greek. Historians credit this system for democratizing the city and increasing the political power of groups that had formerly played a limited role in city politics.

Lowell switched from proportional representation to at-large plurality voting through a city-wide referendum in 1957. Contemporary accounts show that proponents of the shift explicitly stated that moving to an at-large plurality scheme would promote “majority rule” and would limit “minority rule” of the city's various ethnic and national groups. The local paper characterized the “most objectionable feature” of proportional representation as “the opportunity [that] minority groups are given ... for representation” because it purportedly led to “minority representation strictly on a racial or national basis” and motions or decisions based on “racial extraction ...”

The referendum passed in 1957, and Lowell moved to its current at-large system. The effect predicted soon came to be realized as minority-group participation in city politics was significantly curtailed. Over the years, cities across the country and in Massachusetts have moved away from at-large electoral systems — either voluntarily, by court order, or under threat of litigation. Lowell, however, clung to its at-large system. Until the lawsuit, it was the last Massachusetts city with over 100,000 residents to maintain an exclusively at-large plurality electoral system.

### 3.2 COALITION CLAIMS: THE NEW FRONTIER

The VRA challenge against Lowell was brought by Lawyers for Civil Rights with *pro bono* co-counsel from the law firm of Ropes & Gray in Spring 2017 on behalf of Asian-American and Latinx residents of the city. In so doing, these courageous plaintiffs became part of an emerging trend in voting rights litigation: a coalition lawsuit.

When the VRA was first passed, the paradigmatic voting challenge was a claim brought by African-American voters (often in the South), alleging that a White majority voting bloc was impermissibly suppressing or diluting their vote. As the country has become increasingly diverse, however, and as voting rights litigation outside the South has become increasingly commonplace, this paradigm has shifted. Voting rights cases have been brought on behalf of Latinx residents, Native Americans, and Asian-American communities.

Increasingly, coalition claims are also being brought – that is, claims raised by different communities of color that band together to challenge an electoral system that harms them collectively. The first such cases tended to be African-American and Latinx coalitions. The Lowell case is believed to be the first case brought by a coalition of Asian-American and Latinx voters. Such coalition lawsuits present a valuable opportunity for communities of color to join forces to take on structural systems that harm them in similar ways.

The majority of circuit courts to consider Section 2 coalition claims have recognized them as valid.<sup>2</sup> In 1987, the U.S. Court of Appeals for the Fifth Circuit, which hears cases from Texas, Louisiana, and Mississippi, became the first circuit court to recognize that minority groups could be aggregated for affirmative suits under the VRA.<sup>3</sup> The Fifth Circuit again reached the same result one year later in *Campos v. City of Baytown, Tex.*<sup>4</sup> Analyzing the text of the VRA, the *Campos* court concluded that:

“There is nothing in the law that prevents the plaintiffs from identifying the protected aggrieved minority to include both Blacks and Hispanics. [Section 2] protects the right to vote of both racial and language minorities. . . . If, together, they are of such numbers residing geographically so as to constitute a majority in a single member district, they cross the *Gingles* threshold as potentially disadvantaged voters.”<sup>5</sup>

The court further noted that to prove vote dilution under *Gingles*, a minority coalition must also show that the minority groups “actually vote together and are im-

<sup>2</sup>The U.S. Supreme Court has yet to decide whether Section 2 permits coalition claims, but has assumed without deciding that such claims are cognizable. See *Grove v. Emison*, 507 U.S. 25, 41 (1993) (“Assuming (without deciding) that it was permissible for the District Court to combine distinct ethnic and language minority groups for purposes of assessing compliance with §2, when dilution of the power of such an agglomerated political bloc is the basis for an alleged violation, proof of minority political cohesion is all the more essential.”).

<sup>3</sup>See *LULAC v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1500 (5th Cir.), *vacated on state law grounds*, 829 F.2d 546 (5th Cir. 1987) (approving of the manner in which African-Americans and Latinx were joined together as a compact minority group “capable of carrying a district”)

<sup>4</sup>840 F.2d 1240 (5th Cir. 1988)

<sup>5</sup>*Id.* at 1244

peded in their ability to elect their own candidates by all of the circumstances, including especially the bloc voting of a white majority that usually defeats the candidate of the minority.”

The Eleventh Circuit, which hears appeals from Alabama, Florida, and Georgia, adopted the Fifth Circuit’s view on coalition districts in *Concerned Citizens of Hardee County v. Hardee County Board of Commissioners*. They found that “[t]wo minority groups (in this case [B]lacks and [H]ispanics) may be a single [VRA] minority if they can establish that they behave in a politically cohesive manner.”<sup>6</sup> The Ninth Circuit, which hears appeals from numerous Western states, also recognized coalition districts in *Badillo v. City of Stockton, California*.<sup>7</sup> And in *Bridgeport Coalition for Fair Representation v. City of Bridgeport*, the U.S. Court of Appeals for the Second Circuit (covering Connecticut, New York, and Vermont) also assumed that coalition claims are covered under the VRA.<sup>8</sup> Only the Sixth Circuit, which hears appeals from Michigan, Ohio, Kentucky, and Tennessee, has concluded that coalition claims are not viable.<sup>9</sup>

In the Lowell case, the city attempted to obtain an early ruling from the federal district court hearing the case that coalition claims are improper under the VRA. However, the federal court ruled in favor of the Asian-American and Latinx voters, stating that allowing coalition claims “properly [serves] Section 2’s legislative intent of curing past discrimination. . . .” The Lowell ruling makes sense based on the well-established VRA precedent, discussed above, from courts across the country. It also makes sense from a practical perspective as a matter of legal efficiency, particularly to conserve resources and to expedite judicial proceedings. It would be burdensome on the court if voters were to bring separate lawsuits raising identical claims based on the same set of facts against the same responsible parties.

Notably, intersectionality<sup>10</sup> lies at the heart of coalition claims. This is particularly important for voting rights work in cities and towns that have rapidly diversified in the past decade — and that will continue to experience significant demographic shifts and transitions. In the 21st century, natural population growth and migration are changing the faces of communities across the country. As population growth transforms communities beyond the historical Black/White divide, voting rights advocates will confront far more complex social and community dynamics. Even in communities with intensely segregated residential patterns, shared experiences and interests are increasingly common among various racial and ethnic groups vis-à-vis the dominant White voting bloc. Already, it is becoming more challenging to find racial disparity along a single axis of racial or ethnic identity. We predict that this dynamic will continue to consolidate, resulting in intertwined voting experiences across distinct communities of color. This will make coalition claims far more common, relevant, and useful to tackle systemic and structural practices that deny or abridge the right to vote in the next decade.

<sup>6</sup>906 F.2d 524, 526 (11th Cir. 1990)

<sup>7</sup>956 F.2d 884, 886 (9th Cir. 1992) (assuming that a combined group of African-American and Latinx voters met the first *Gingles* precondition)

<sup>8</sup>See 26 F.3d 271, 275–276 (2d Cir. 1994), *vacated on other grounds*, 512 U.S. 1283 (1994)

<sup>9</sup>See *Nixon v. Kent Cty.*, 76 F.3d 1381, 1386–1393 (6th Cir. 1996) (en banc).

<sup>10</sup>See Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color” in *Stanford Law Review*



Coalition claims are, therefore, highly viable under the VRA, allowing communities of color to band together to challenge at-large electoral systems that harm them collectively. As courts approving coalition claims have noted, such coalitions must still satisfy the *Gingles* preconditions (*i.e.*, show that it is possible to draw a majority-minority district and demonstrate racially polarized voting). In the Lowell example, as explained above, such proof is readily apparent.

Coalition claims can be tricky, however. Even when various racial groups share a community and common interests, they may not be used to working together. In Lowell, for example, the Asian and Latinx communities shared many concerns about how their city and school district were run. Both communities had long sought more services for English Language Learners in the schools and both had intense interest in policies concerning how the city cooperated with federal immigration officials. The two communities sometimes intersected around these issues, but not always. Although voting patterns indicated that the two communities were politically cohesive when it came to the ballot box, this had not always translated to on-the-ground coordination in advocacy.

Interestingly, the litigation itself proved to be a galvanizing moment that brought the two communities together. As the plaintiffs and their allies began considering a lawsuit, and then proceeding with it, many evenings were spent in community members' living rooms, over potluck dinners of *tamales* and traditional Cambodian food, learning more about each other's lived experience and rich culture; their concerns about the unequal provision of services in Lowell; and about their shared hopes and dreams for their children and the future of the city.

These conversations were often inter-generational, simultaneously looking backward at often painful and racially charged moments in the city's history and projecting forward to a more equitable and inclusive future. Elders in each community who had lived through decades of being shut out of the political process — and largely relegated to the shadows of civic life more generally — spoke movingly about the weight of that history and how it had created barriers to success. At the other end of the spectrum, young families questioned how the lack of political representation would affect their children in the future. They feared not only that their concerns would be given short shrift by political leaders, but also that their children would grow up not seeing pathways to representation and leadership visibly open to them.

In some cases, the dominant power structure may have been able to remain entrenched, in part, by pitting communities of color against each other—divide and conquer—one of the oldest tricks in the playbook, but unfortunately often successful. In Lowell, for example, members of both the Asian and Latinx communities discussed how over the years the powers-that-be had sometimes held up one community as an example at the expense of the other, whether that was decrying a wave of recent Cambodian refugees to the Latinx community, or subtly signaling to the Asian community that “you're not like them” when referencing the Latinx community.

As these cross-cultural and inter-generational conversations grew deeper and more intense, the commonalities between the Asian and Latinx residents of Lowell



became even more clear. So, too did the need to band together to work toward a common solution. They coalesced around meaningful representation in public institutions as a matter of community empowerment and dignity.

### 3.3 REPRESENTATION AND DIGNITY

Beneath the numbers and maps that are critical to any VRA challenge lies the day-to-day reality of what it means to live in a city or town without enjoying equal representation. The types of proof required for VRA claims — and in particular the “Senate factors” — allow marginalized voters to draw upon their lived experiences in making their case.

The Lowell litigation again provides a compelling example of how this can be done. For the plaintiffs and other residents of color in Lowell, the lack of adequate representation in city government has deep ramifications. Simply put, far too often, the needs of Lowell’s communities of color had traditionally been ignored. For example, in the years surrounding the lawsuit, Lowell was considering whether to renovate or move its high school, which was located downtown. This was a critical issue for all residents in Lowell, but particularly for communities of color (as noted above, approximately two-thirds of Lowell’s student body are children of color). Many families of color favored renovating the existing infrastructure to make sure their children remained within walking distance of after-school programs and activities. Yet until late in the process, there was little outreach or notice to communities of color about this issue, and little attempt to engage diverse communities in relevant discussions. In this manner, communities of color were largely — and often — excluded from the city’s affairs. Meanwhile, students of color faced persistent achievement gaps and disparities in school discipline that had long gone unaddressed.



Similarly, a citizen petition had asked the Lowell City Council to limit local law enforcement cooperation with federal immigration authorities — an issue that had taken on intense importance for many immigrant communities across the country under the Trump Administration. However, the Lowell City Council summarily declined to enact any such policy with little recognition of the fact that this issue presented significant concerns for communities of color, particularly at a time when federal immigration enforcement had been growing increasingly aggressive and intrusive. In a climate of fear and uncertainty, this institutional neglect left many families of color feeling compromised and vulnerable.

Lack of community representation in Lowell had also resulted in unequal distribution of basic city resources, services, and amenities. For example, it took years — and a major push — just to get lights turned on in Lowell's Clemente Park, a park frequented by many children and families of color. Meanwhile, White families in other parks were never left in the dark.



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The lack of representation and respect permeated all levels of Lowell's city government. To aggravate matters, there were few, if any, translation services at City Council or School Committee meetings, meaning that non-English speakers were, literally, left out of the loop on major decisions. And Lowell had neglected key entities, including the city's Diversity Council, which was created years ago — only to sit moribund with no appointed members when the lawsuit was filed.

As these examples illustrate, elected officials are simply unaccountable and unresponsive to communities of color under a racially polarized at-large system, with little motivation to be responsive to those communities' needs or concerns. This triggers a cascade of neglect, impoverishing the services that are offered to residents in communities of color. Alarming accounts of services and resources being delayed — or withheld altogether — are not uncommon. This is not just a matter of fundamental fairness; it is also linked to the health and well-being of our democracy. Neglecting constituents based on their race, identity, or zip code erodes political participation and engagement. It generates tension and distrust between communities of color and public officials. It truly is a dangerous and slippery slope from unfilled potholes to victims and witnesses of crime who do not trust the police.

At an even more fundamental level, our plaintiffs and the communities they represented were profoundly aware that Lowell's elected bodies simply did not look like them. They did not see themselves reflected in the halls of power. In a representative democracy, having elected bodies that, in fact, do not represent the rich diversity of the city was an affront to the dignity of communities of color. As our clients emphasized throughout the litigation, they were not suing because they

were antagonistic to the city. On the contrary, they sued because they loved their city and were an integral part of it. They just wanted to democratize the electoral system so that it would fairly and equally allow them to be part of all aspects of civic life — including the city's elected bodies.

### 3.4 REMEDIES

It is not surprising that communities of color must often resort to a lawsuit in order to change entrenched at-large electoral systems. After all, the elected officials — the ones who could change the system voluntarily if they wished — got there through the very system being challenged, and for that reason are often reluctant to undertake reform and nervous to change the status quo. Putting the question of change to the voters as a ballot measure suffers from the same obvious problem: trying to fix a broken system through the system itself.

The Lowell case again provides a stark example of how difficult electoral reform can be:

- For example, in 2009, a proposal to change the city's election system was on the ballot. Asian-American and Latinx residents overwhelmingly voted in favor of the referendum. However, the majority voting bloc voted approximately 2-1 against it, thereby defeating it.
- In 2010 and 2011, the City Council was asked to consider changing the election system, but no reforms occurred.
- In 2016, a City Councilor once again proposed discussing whether the current electoral system should be changed. No other City Councilor seconded that motion, and the matter died without even a discussion of the issue.

This history illustrates why it often takes the outside pressure of a lawsuit, or a court ruling, to effect change in local electoral systems.

And if change is forced through the courts, what are the remedies? Once liability is found, the typical remedy in a voting rights challenge is injunctive relief, meaning an order from the court enjoining — or stopping — the governmental entity from continuing the challenged electoral system. To determine what system gets put in place instead, federal courts often turn first to the defendant, or to the parties jointly, for an alternative system. Courts are typically reluctant to impose a court-ordered remedy, without first asking the parties for proposals. Alternative systems can take many forms. Often the jurisdictions will move to a district-based system, which by its nature does not suffer from the same dilutive flaws as an at-large system. Frequently, the result will be a hybrid system: where certain seats are still elected at-large, but others are elected by district or ward. Proportional voting may also be a viable remedy. Depending on the specific needs of a given community, each of these alternative systems can have its pros and cons.

## 4 CONCLUSION: A SETTLEMENT IN LOWELL, AND NEXT STEPS

The Lowell lawsuit successfully settled in 2019, with the City agreeing to abandon its at-large method of electing City Council and School Committee members. At the national level, the settlement was groundbreaking: rather than imposing a particular alternative electoral system, the settlement intentionally and deliberately placed the issue back on the community to decide what alternative system to adopt.

The settlement set forth four different types of alternatives that the city could choose from – all of which were deemed to be acceptable alternatives under the VRA that would fully remedy the vote dilution problem of the old at-large system. This “menu of options” included:

1. An all-district system;
2. Several “hybrid” systems that combined at-large and district seats;
3. An at-large but ranked choice voting model; and
4. A three-district ranked choice voting model.

Throughout the summer of 2019, the community debated which of the models would work best for their City. Just as the litigation had brought together communities of color in discussions of the problem of political exclusion, now those same communities came together in a conversation about solutions to the problem. This time, though, they knew that they had the force of a federal court Consent Decree behind them: that the question was no longer *whether* the City would change but *how* it would do so. And they knew that it had been their communities, working together through the lawsuit and beyond, that had created the opening for change to happen. The sense that the City was entering a new chapter in its history was palpable.

Pursuant to the Consent Decree, in September 2019, the City Council narrowed the options to two: a) the at-large ranked choice option; and b) the 8-3 hybrid option (eight district seats and three at-large seats). The options were placed on the ballot in November 2019, as a non-binding initiative, to let voters express their preference. Under the Consent Decree, this was accompanied by a comprehensive trilingual public education campaign in English, Spanish, and Khmer. Ultimately, voters expressed their preference for the 8-3 hybrid system, which the city then officially adopted in December 2019.

Jurisdictions that have moved away from at-large electoral systems to one of these fairer systems have typically enjoyed a number of benefits. First, residents become more engaged when they know that their vote really counts. This increases integrity in the system and reduces alienation and voter apathy. Second, representatives elected through fairer electoral systems become more responsive to the needs of communities of color. When elected officials know that they need your vote to win, they have more incentive to be responsive to your needs once in office. Third, it

is more affordable for candidates to run in a discrete district or ward than to run city-wide. Reducing the costs and barriers to entry often results in more diverse and nontraditional candidates who simply would not have the resources to run city-wide.

Finally, when elections move to fairer systems, elected bodies often become more diverse. And diversity on elected bodies carries with it a host of benefits: from increasing the comfort level of constituents of color in approaching their elected leaders to allowing children of color growing up in a community to see that pathways to leadership are open to them as well. Everyone in diverse communities such as Lowell should see themselves reflected in the halls of power. Notably, local elected positions are also often stepping-stones to higher office, thus creating a diverse pipeline for positions of even greater prominence.

At-large election systems carry with them the inherent potential for inequity. A cohesive majority is not only able to rule, but able to sweep the table every time in every election. Particularly when the vote of communities of color is diluted in this way, the VRA can be a potent tool for forcing change. The law remains broad and flexible, allowing increasingly diversifying communities to take on established power structures—and win.

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