

**Minority Vote Dilution.** Edited by Chandler Davidson.\* Washington, D.C.: Howard University Press, 1984. Pp. xi, 298 \$ 24.95.<sup>1</sup>

*Minority Vote Dilution* is a valuable guide to those who seek to ensure the full and meaningful participation of minorities in the American electoral process. The fifteen essayists whose essays comprise this volume are pioneers in combatting the often complex and frequently disguised attempts to hold back the tide of minority participation promised by the Voting Rights Act of 1965.<sup>2</sup>

The essays cover four topic areas: Historical Perspectives; Aspects of Vote Dilution Today; Remedies and Prospects. The historical essays discuss the methods used by Whites to undermine the First Reconstruction's goal of minority participation in the electoral process;<sup>3</sup> the utilization of history in the courts to prove purposeful discrimination in the promulgation of election rules, apportionment and form of government changes;<sup>4</sup> and the effects of at-large elections upon minority representation.<sup>5</sup> These essays provide us with a review of the past, but they are also significant because their authors have used history to teach us lessons about the present and the future.

The essays that focus upon modern methods of vote dilution outline the difficulties faced by those who litigate voting rights issues. The most prominent of these difficulties was the United States Supreme Court's ambivalence regarding the required standard of proof in voting rights cases. The problem became most acute after *City of Mobile v. Bolden*.<sup>6</sup> In *Mobile* the Court held that challengers must prove purposeful discrimination when challenging the adoption and operation of an election scheme. Prior Court decisions had hinted that discrimination could be proven by looking to effects that the reapportionment scheme had on the minority voter's participation in the political process and the election of legislators of their choice. As a result, voting rights plaintiffs were required to prove intent in constitutional challenges and challenges brought under section 2 of the 1965 Voting Rights Act.<sup>7</sup> This sent plaintiffs' lawyers into frantic searches<sup>8</sup> for methods to prove, indirectly or circumstantially, purposeful discrimination. The 1982 amendments to the Voting Rights Act incorporated an effects test under section 2, removing the requirement of proving purposeful discrimination. The Court, two days after

---

\* Professor of Sociology, Rice University.

1. This book was commissioned by the Joint Center for Political Studies in an effort to devote scholarly attention to vote dilution, one of the most prominent issues in race relations.

2. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1966).

3. Kousser, *The Undermining of the First Reconstruction*, in MINORITY VOTE DILUTION 27 (C. Davidson ed. 1984). Kousser's expert historical testimony was instrumental in proving purposeful discrimination in the second *Mobile* case. *Bolden v. City of Mobile*, 542 F. Supp. 1050 (S.D. Ala. 1982).

4. McCrary, *History in the Courts*, in MINORITY VOTE DILUTION, *supra* note 3 at 47.

5. Davidson & Korbet, *At-Large Elections and Minority Group Representation*, in *id.* at 65.

6. 446 U.S. 55 (1980).

7. Section 2 prohibits practices, standards or procedures imposed to deny or abridge the right to vote on account of race or color. 42 U.S.C. § 1973. Constitutional challenges may be brought under the fourteenth and/or fifteenth amendments to the United States Constitution.

8. See McCrary, *History in the Courts*, in MINORITY VOTE DILUTION *supra* note 3, at 47 and BLACKSHER and MENEFFEE, AT-LARGE ELECTIONS AND ONE PERSON, ONE VOTE, in *id.* at 203. McCrary testified as a historical expert in *Mobile v. City of Bolden*; Blacksher and Menefee were plaintiffs' counsel in the case.

President Reagan signed the amendments, held in *Rogers v. Lodge*<sup>9</sup> that an "effects" standard, which was rejected in *Bolden* was sufficient to prove discrimination under section 2. However, the proving purposeful discrimination remains a requirement for challenges brought under the fourteenth and fifteenth amendment.

Section 5 of the Voting Rights Act provides for the submission of electoral changes in covered jurisdictions to the United States Justice Department or the United States District Court for the District of Columbia for preclearance. The goal was to allow scrutiny of planned alterations in order to prevent their implementation when such alterations had the potential to adversely affect minority participation. One method used by the Justice Department was to compare new plans with plans operational at the time of submission; the operational plans were used as benchmarks for new plans. The 1982 amendments preclude using plans not scrutinized under section 5 as benchmarks for preclearance determinations.

Those who mistakenly assume that all voting rights struggles have been won, and that minorities now enjoy full and meaningful participation in the electoral process need only look to the "Remedies" essays for a rude awakening. We are starkly reminded by Drew Days and Lani Guinier<sup>10</sup> that new strategies will be devised to reverse or retard electoral gains. Changing electoral rules, voter list purges,<sup>11</sup> moving polling places and changing from district elections to at-large elections are not submitted to the Justice Department or the United States District for the District of Columbia for preclearance. Recently, the Court in *City of Pleasant Grove v. United States*.<sup>12</sup> found discriminatory vote dilution in the City's attempts to enhance White voting power by enlarging the City through annexation.

In *Thornburg v. Gingles*<sup>13</sup> Justice O'Connor suggests that a racial group's voting strength might be measured by focusing upon factors other than the ability to elect Black officials. The "Influence Theory" is an outgrowth of this suggestion. This theory effectively prohibits creating a Black voter majority district. Thus district lines could be drawn to allow Black voters to influence the election rather than ensuring the election of Black officials. The influence concept has been criticized for its tendency to help Republicans,<sup>14</sup> and deny Blacks a significant role in coalition building.

In an effort to reward compliance with the Voting Rights Act, the 1982 amendments included bailout provisions which provide for the termination of coverage for a state, municipality or other relevant unit prior to 2009. Yet the impact of the bailout provisions depends in large measure upon the ideological perspective of the United States Justice Department. For instance, the Reagan Administration's refusal to act affirmatively in the area of voting rights

---

9. 458 U.S. 613 (1982).

10. Days & Guinier, *Enforcement of Section 5 of the Voting Rights Act*, in *id.* at 167. Days and Guinier have both served as assistant counsel for the NAACP Legal Defense Fund.

11. See COX & TURNER, *The Voting Rights Act in Alabama: A Current Legal Assessment, Mobile Al.* (1981) for a detailed study of the effects of this tactic upon minority participation. See also *Jones v. Edwards*, 674 F. Supp. 1225 (E.D. La. 1987) (3 judge district court).

12. 479 U.S. 462 (1987).

13. 478 U.S. 30 (1986).

14. Brace, Grofman & Handley, *Does Redistricting Aimed to Help Blacks Necessarily Help Republicans?*, 49 J. POL. 169 (1987).

has retarded the enforcement of the Voting Rights Act and a constant vigil is required to prevent loose application of the bailout option. Fortunately, the Reagan Administration has ended, but only through full and meaningful participation in the electoral process can minorities have a significant role in choosing presidential successors and those who will serve in the other branches and levels of government. Elimination of the devices used to dilute minority voting power is a must if American democracy is to benefit Blacks as it has benefitted other Americans. In sum, *Minority Vote Dilution* is essential reading for those who work toward the elimination of the devices of minority vote dilution and for those who desire to know more about race, law and voting.

REBECCA J. KING