

**Chapter 29A.92 RCW
VOTING RIGHTS ACT**

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RCW 29A.92.005 Findings—Intent. The legislature finds that electoral systems that deny race, color, or language minority groups an equal opportunity to elect candidates of their choice are inconsistent with the right to free and equal elections as provided by Article I, section 19 and Article VI, section 1 of the Washington state Constitution as well as protections found in the Fourteenth and Fifteenth amendments to the United States Constitution. The well-established principle of "one person, one vote" and the prohibition on vote dilution have been consistently upheld in federal and state courts for more than fifty years.

The legislature also finds that local government subdivisions are often prohibited from addressing these challenges because of Washington laws that narrowly prescribe the methods by which they may elect members of their legislative bodies. The legislature finds that in some cases, this has resulted in an improper dilution of voting power for these minority groups. The legislature intends to modify existing prohibitions in state laws so that these jurisdictions may voluntarily adopt changes on their own, in collaboration with affected community members, to remedy potential electoral issues so that minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election.

The legislature intends for this chapter to be consistent with federal protections that may provide a similar remedy for minority groups. Remedies shall also be available where the drawing of crossover and coalition districts is able to address both vote dilution and racial polarization.

The legislature also intends for this chapter to be consistent with legal precedent from *Mt. Spokane Skiing Corp. v. Spokane Co.* (86 Wn. App. 165, 1997) that found that noncharter counties need not adhere to a single uniform county system of government, but that each county have the same "authority available" in order to be deemed uniform. [2019 c 64 s 6; 2018 c 113 s 102.]

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

RCW 29A.92.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. In applying these definitions and other terms in this chapter, courts may rely on relevant federal case law for guidance.

(1) "At large election" means any of the following methods of electing members of the governing body of a political subdivision:

(a) One in which the voters of the entire jurisdiction elect the members to the governing body;

(b) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body; or

(c) One that combines the criteria in (a) and (b) of this subsection or one that combines at large with district-based elections.

(2) "Cohesive" means that members of a group tend to prefer the same candidates or other electoral choices.

(3) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(4) "Polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class or a coalition of protected classes, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

(5) "Political subdivision" means any county, city, town, school district, fire protection district, port district, or public utility district, but does not include the state.

(6) "Protected class" means a class of voters who are members of a race, color, or language minority group in the state of Washington, as this class is referenced and defined in the federal voting rights act, 52 U.S.C. 10301 et seq. [2023 c 56 s 2; 2018 c 113 s 103.]

Effective date—2023 c 56: See note following RCW 29A.92.720.

RCW 29A.92.020 Method of election—Equal opportunity for protected class. As provided in RCW 29A.92.030, no method of electing the governing body of a political subdivision may be imposed or

applied in a manner that impairs the ability of members of a protected class or classes to have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of voters who are members of a protected class or classes. [2018 c 113 s 104.]

RCW 29A.92.030 Violations—Factors. (1) A political subdivision is in violation of this chapter when it is shown that:

(a) Elections in the political subdivision exhibit polarized voting; and

(b) Members of a protected class or classes do not have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of members of that protected class or classes.

(2) In determining whether there is polarized voting under this chapter, the court shall analyze election results including, but not limited to, elections of the governing body of the political subdivision, ballot measure elections, elections in which at least one candidate is a member of a protected class, and other electoral choices that affect the rights and privileges of members of a protected class. The court is not required to consider explanations, including partisanship, for why polarized voting under this chapter exists in the political subdivision to determine whether polarized voting under this chapter exists in the political subdivision. Elections conducted prior to the filing of an action pursuant to this chapter are more probative to establish the existence of polarized voting than elections conducted after the filing of an action.

(3) The election of candidates who are members of a protected class and who were elected prior to the filing of an action pursuant to this chapter shall not preclude a finding of polarized voting that results in an unequal opportunity for a protected class to elect candidates of their choice.

(4) The equal opportunity to elect shall be assessed pragmatically, based on local election conditions, and may include crossover districts. No single factor is dispositive or necessary to establish a violation of this section.

(5) The fact that members of a protected class are not geographically compact or concentrated to constitute a majority in a proposed or existing district-based election district shall not preclude a finding of a violation under this chapter, but may be a factor in determining a remedy.

(6) Proof of intent on the part of the voters or elected officials to discriminate against a protected class is not required for a cause of action to be sustained.

(7) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors, to establish a violation of this chapter.

(8) A class of people protected by this section may include a coalition of members of different racial, color, or language minority groups. A coalition of members of different protected classes is not required to demonstrate that each individual racial, color, or language minority group which comprises the coalition is cohesive, only that the coalition as a whole is cohesive. [2023 c 56 s 3; 2019 c 64 s 7; 2018 c 113 s 302.]

Effective date—2023 c 56: See note following RCW 29A.92.720.

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

RCW 29A.92.040 Voluntary change to electoral system—Authorized.

(1) A political subdivision that conducts an election pursuant to state, county, or local law, is authorized to change its electoral system, including, but not limited to, implementing a district-based election system, or increasing the number of elected officials on a county commission as authorized by RCW 29A.92.115, to remedy a potential violation of RCW 29A.92.020.

(2) If a political subdivision invokes its authority under this section to implement a district-based election system, the districts shall be drawn in a manner consistent with RCW 29A.92.050. [2023 c 56 s 4; 2018 c 113 s 201.]

Effective date—2023 c 56: See note following RCW 29A.92.720.

RCW 29A.92.050 Voluntary change to electoral system—Notice—New elections—Districting. (1)(a) Prior to the adoption of its proposed plan, the political subdivision must provide public notice to residents of the subdivision about the proposed remedy to a potential violation of RCW 29A.92.020. If a significant segment of the residents of the subdivision have limited English proficiency and speaks a language other than English, the political subdivision must:

(i) Provide accurate written and verbal notice of the proposed remedy in languages that diverse residents of the political subdivision can understand, as indicated by demographic data; and
(ii) Air radio or television public service announcements describing the proposed remedy broadcast in the languages that diverse residents of the political subdivision can understand, as indicated by demographic data.

(b) The political subdivision shall hold at least one public hearing on the proposed plan at least one week before adoption.

(c) For purposes of this section, "significant segment of the community" means five percent or more of residents, or five hundred or more residents, whichever is fewer, residing in the political subdivision.

(2)(a) If the political subdivision invokes its authority under RCW 29A.92.040 and the plan is adopted during the period of time between the first Tuesday after the first Monday of November and on or before January 15th of the following year, the political subdivision shall order new elections to occur at the next succeeding general election.

(b) If the political subdivision invokes its authority under RCW 29A.92.040 and the plan is adopted during the period of time between January 16th and on or before the first Monday of November, the next election will occur as scheduled and organized under the current electoral system, but the political subdivision shall order new elections to occur pursuant to the remedy at the general election the following calendar year.

(3) If a political subdivision implements a district-based election system under RCW 29A.92.040(2), the plan shall be consistent with the following criteria:

(a) Each district shall be as reasonably equal in population as possible to each and every other such district comprising the political subdivision.

(b) Each district shall be reasonably compact.

(c) Each district shall consist of geographically contiguous area.

(d) To the extent feasible, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

(e) District boundaries may not be drawn or maintained in a manner that creates or perpetuates the dilution of the votes of the members of a protected class or classes.

(f) All positions on the governing body must stand for election at the next election for the governing body, scheduled pursuant to subsection (2) of this section. The governing body may subsequently choose to stagger the terms of its positions.

(4) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in RCW 44.05.030 shall forward the census information to each political subdivision.

(5) No later than November 15th of each year ending in one, the governing body of the political subdivision that had previously invoked its authority under RCW 29A.92.040 to implement a district-based election system, or that was previously charged with redistricting under RCW 29A.92.110, shall prepare a plan for redistricting its districts, pursuant to RCW 29A.76.010, and in a manner consistent with this chapter. [2021 c 173 s 4; (2021 c 173 s 3 expired January 1, 2023). Prior: 2019 c 454 s 1; 2019 c 64 s 8; 2018 c 113 s 202.]

Effective date—2021 c 173 ss 2 and 4: See note following RCW 29A.76.010.

Effective date—Expiration date—2021 c 173 ss 1 and 3: See notes following RCW 29A.76.010.

Retroactive application—2019 c 454: "This act applies retroactively to January 16, 2019." [2019 c 454 s 11.]

Effective date—2019 c 454: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 21, 2019]." [2019 c 454 s 13.]

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

RCW 29A.92.060 Voter challenge of electoral system—Notice. (1)

A voter who resides in the political subdivision, an organization whose roster of members and volunteers includes a voter who resides in the political subdivision, or a tribe located at least in part in the political subdivision who intends to challenge a political subdivision's electoral system under this chapter shall first notify the political subdivision. The political subdivision shall promptly make such notice public.

(2) The notice provided shall identify and provide contact information for the person or persons who intend to file an action, and shall identify the protected class or classes whose members do not have an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election because of alleged vote dilution and polarized voting. The notice shall also include a type of remedy the person believes may address the alleged violation of RCW 29A.92.030. [2023 c 56 s 5; 2019 c 64 s 9; 2018 c 113 s 301.]

Effective date—2023 c 56: See note following RCW 29A.92.720.

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

RCW 29A.92.070 Voter challenge of electoral system—Good faith effort to remedy—Court approval—Safe harbor—Reimbursement of costs.

(1) The political subdivision shall work in good faith with the person, organization, or tribe providing the notice to implement a remedy that provides the protected class or classes identified in the notice an equal opportunity to elect candidates of their choice. Such work in good faith to implement a remedy may include, but is not limited to consideration of: (a) Relevant electoral data; (b) relevant demographic data, including the most recent census data available; and (c) any other information that would be relevant to implementing a remedy.

(2) If the political subdivision adopts a remedy that takes the notice into account, or adopts the notice's proposed remedy, the political subdivision shall seek a court order acknowledging that the political subdivision's remedy complies with RCW 29A.92.020 and was prompted by a plausible violation. The person who submitted the notice may support or oppose such an order, and may obtain public records to do so. The political subdivision must provide all political, census, and demographic data and any analysis of that data used to develop the remedy in its filings seeking the court order and with any documents made public. All facts and reasonable inferences shall be viewed in the light most favorable to those opposing the political subdivision's proposed remedy at this stage. There shall be a rebuttable presumption that the court will decline to approve the political subdivision's proposed remedy at this stage.

(3) If the court concludes that the political subdivision's remedy complies with RCW 29A.92.020, an action under this chapter may not be brought against that political subdivision for four years by

any party so long as the political subdivision does not enact a change to or deviation from the remedy during this four-year period that would otherwise give rise to an action under this chapter.

(4) In agreeing to adopt the person's, organization's, or tribe's proposed remedy, the political subdivision may do so by stipulation, which shall become a public document.

(5) (a) If the court issues an order under subsection (2) of this section, the person, organization, or tribe who sent the notice may make a demand to the political subdivision for reimbursement of the costs incurred in conducting the research necessary to send the notice. A demand made under this subsection must:

(i) Be in writing;

(ii) Be received by the political subdivision within 30 days of the adoption of the new electoral system; and

(iii) Include financial documentation, such as a detailed invoice for demographic services, that supports the demand. The political subdivision may request additional documentation if the documentation provided is insufficient for the political subdivision to corroborate the claimed costs.

(b) The political subdivision shall, within 60 days of receiving the demand, reimburse the reasonable costs of the person, organization, or tribe who sent the notice, not to exceed \$50,000. [2023 c 56 s 8; 2019 c 64 s 10; 2018 c 113 s 303.]

Effective date—2023 c 56: See note following RCW 29A.92.720.

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

RCW 29A.92.080 Voter challenge of electoral system—Filing of action—Multiple challenges—Reimbursement of costs. (1) Any voter who resides in the political subdivision, organization whose roster of members and volunteers includes a voter who resides in the political subdivision, or tribe located at least in part in the political subdivision may file an action under this chapter if, 90 days after a political subdivision receives notice of a challenge to its electoral system under RCW 29A.92.060, the political subdivision has not obtained a court order stating that it has adopted a remedy in compliance with RCW 29A.92.020.

(2) If a political subdivision has received two or more notices containing materially different proposed remedies, the political subdivision shall work in good faith with the persons to implement a remedy that provides the protected class or classes identified in the notices an equal opportunity to elect candidates of their choice. If the political subdivision adopts one of the remedies offered, or a different remedy that takes multiple notices into account, the political subdivision shall seek a court order acknowledging that the political subdivision's remedy is reasonably necessary to avoid a violation of RCW 29A.92.020. The persons, organizations, or tribes who submitted the notice may support or oppose such an order, and may obtain public records to do so. The political subdivision must provide all political, census, and demographic data and any analysis of that data used to develop the remedy in its filings seeking the court order and with any documents made public. All facts and reasonable inferences shall be viewed in the light most favorable to those

opposing the political subdivision's proposed remedy at this stage. There shall be a rebuttable presumption that the court will decline to approve the political subdivision's proposed remedy at this stage.

(3) If the court concludes that the political subdivision's remedy complies with RCW 29A.92.020, an action under this chapter may not be brought against that political subdivision for four years by any party so long as the political subdivision does not enact a change to or deviation from the remedy during this four-year period that would otherwise give rise to an action under this chapter.

(4) (a) If the court issues an order under subsection (2) of this section, the persons, organizations, or tribes who sent notices may make a demand to the political subdivision for reimbursement of the costs incurred in conducting the research necessary to send the notices. A demand made under this subsection must:

(i) Be in writing;

(ii) Be received by the political subdivision within 30 days of the adoption of the new electoral system; and

(iii) Include financial documentation, such as a detailed invoice for demographic services, that supports the demand. The political subdivision may request additional documentation if the documentation provided is insufficient for the political subdivision to corroborate the claimed costs.

(b) The political subdivision shall, within 60 days of receiving the demand, reimburse the reasonable costs of the persons, organizations, or tribes who sent the notices, not to exceed \$50,000. [2023 c 56 s 9; 2019 c 64 s 11; 2018 c 113 s 304.]

Effective date—2023 c 56: See note following RCW 29A.92.720.

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

RCW 29A.92.090 Action in superior court—Venue—Joint action.

(1) After exhaustion of the time period in RCW 29A.92.080, any voter who resides in a political subdivision, organization whose roster of members and volunteers includes a voter who resides in the political subdivision, or tribe located at least in part in the political subdivision where a violation of RCW 29A.92.020 is alleged may file an action in the superior court of the county in which the political subdivision is located. If the action is against a county, the action may be filed in the superior court of such county, or in the superior court of either of the two nearest judicial districts as determined pursuant to RCW 36.01.050(2). An action filed pursuant to this chapter does not need to be filed as a class action.

(2) A coalition of members of different protected classes may file an action jointly pursuant to this chapter if they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate. A coalition of members of different protected classes is not required to demonstrate that each individual racial, color, or language minority group which comprises the coalition is cohesive.

(3) Nothing in this section shall be interpreted to relieve a party of the requirement to establish standing as provided in Washington case law when commencing an action under this title. [2023 c 56 s 6; 2019 c 64 s 12; 2018 c 113 s 401.]

Effective date—2023 c 56: See note following RCW 29A.92.720.

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

RCW 29A.92.100 Trial schedule—Statute of limitations—Secrecy of vote—Plaintiff bond. (1) In an action filed pursuant to this chapter, the trial court shall set a trial to be held no later than one year after the filing of a complaint, and shall set a discovery and motions calendar accordingly.

(2) For purposes of any applicable statute of limitations, a cause of action under this chapter arises every time there is an election for any members of the governing body of the political subdivision.

(3) The plaintiff's constitutional right to the secrecy of the plaintiff's vote is preserved and is not waived by the filing of an action pursuant to this chapter, and the filing is not subject to discovery or disclosure.

(4) In seeking a temporary restraining order or a preliminary injunction, a plaintiff shall not be required to post a bond or any other security in order to secure such equitable relief.

(5) No notice may be submitted to any political subdivision pursuant to this chapter before July 19, 2018. [2019 c 64 s 13; 2018 c 113 s 402.]

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

RCW 29A.92.110 Court-ordered remedies—District-based remedies—New elections. (1) After finding a violation of RCW 29A.92.020 or upon stipulation of the parties, the court may order appropriate remedies including, but not limited to, the imposition of a district-based election system or expansion of the number of elected county commissioners if authorized by RCW 29A.92.115. In tailoring a remedy, the court shall consider proposed remedies by the parties and may not give deference to a proposed remedy only because it is proposed by the political subdivision. The court may not approve a remedy that violates this chapter.

(2) If the court orders a district-based remedy, the court must approve proposed district boundaries prior to their implementation. The court must determine that the proposed district boundaries will not violate this chapter.

(3) Implementation of a district-based remedy is not precluded by the fact that members of a protected class do not constitute a numerical majority within a proposed district-based election district. If, in tailoring a remedy, the court orders the implementation of a district-based election district where the members of the protected class are not a numerical majority, the court shall do so in a manner that provides the protected class an equal opportunity to elect candidates of their choice. The court may also approve a district-based election system that provides the protected class the opportunity to join in a coalition of two or more protected classes to elect candidates of their choice if there is demonstrated political cohesion among the protected classes.

(4) In tailoring a remedy after a finding of a violation of RCW 29A.92.020 or upon stipulation of the parties:

(a) If the court's order providing a remedy or approving proposed districts, whichever is later, is issued during the period of time between the first Tuesday after the first Monday of November and on or before January 15th of the following year, the court shall order new elections, conducted pursuant to the remedy, to occur at the next succeeding general election. If a special filing period is required, filings for that office shall be reopened for a period of three business days, such three-day period to be fixed by the filing officer.

(b) If the court's order providing a remedy or approving proposed districts, whichever is later, is issued during the period of time between January 16th and on or before the first Monday of November, the next election will occur as scheduled and organized under the current electoral system, but the court shall order new elections to occur pursuant to the remedy at the general election the following calendar year.

(c) The remedy may provide for the political subdivision to hold elections for the members of its governing body at the same time as regularly scheduled elections for statewide or federal offices. All positions on the governing body must stand for election at the next election for the governing body, scheduled pursuant to this subsection (4). The governing body may subsequently choose to stagger the terms of its positions.

(5) Within thirty days of the conclusion of any action filed under RCW 29A.92.100, the political subdivision must publish on the subdivision's website, the outcome and summary of the action, as well as the legal costs incurred by the subdivision. If the political subdivision does not have its own website, then it may publish on the county website. [2023 c 56 s 7; 2019 c 454 s 2; 2018 c 113 s 403.]

Effective date—2023 c 56: See note following RCW 29A.92.720.

Retroactive application—Effective date—2019 c 454: See notes following RCW 29A.92.050.

RCW 29A.92.115 Increase in number of elected county commissioners—Remedy for vote dilution concerning Indian tribal status. (1) A county may reasonably increase the number of elected commissioners to remedy a potential violation of RCW 29A.92.020 if the protected class or one of the protected classes subject to alleged vote dilution is Indian tribal status.

(2) After finding a violation of RCW 29A.92.020 or upon stipulation of the parties, the court may order a reasonable increase in the number of elected officials on a county commission if the defendant political subdivision is a county and the protected class or one of the protected classes subject to alleged vote dilution is Indian tribal status. [2023 c 56 s 12.]

Effective date—2023 c 56: See note following RCW 29A.92.720.

RCW 29A.92.120 Safe harbor—Limitation of actions. (1) No action under this chapter may be brought by any person against a

political subdivision that has adopted a remedy to its electoral system after an action is filed that is approved by a court pursuant to RCW 29A.92.070 or implemented a court-ordered remedy pursuant to RCW 29A.92.110 for four years after adoption of the remedy if the political subdivision does not enact a change to or deviation from the remedy during this four-year period that would otherwise give rise to an action under this chapter.

(2) No action under this chapter may be brought by any person against a political subdivision that has adopted a remedy to its electoral system in the previous decade before June 7, 2018, as a result of a claim under the federal voting rights act until after the political subdivision completes redistricting pursuant to RCW 29A.76.010 for the 2020 decennial census. [2019 c 64 s 14; 2018 c 113 s 404.]

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

RCW 29A.92.130 Award of fees. (1) In any action to enforce this chapter, the court may allow the prevailing plaintiff or plaintiffs, other than the state or political subdivision thereof, reasonable attorneys' fees, all nonattorney fee costs as defined by RCW 4.84.010, and all reasonable expert witness fees, including all such reasonable fees and costs incurred before filing the action.

(2) (a) A prevailing plaintiff does not need to achieve relief or favorable judgment if the plaintiff demonstrates that they succeeded in altering the political subdivision's behavior to correct a claimed harm.

(b) For purposes of this section, "altering the political subdivision's behavior" includes, but is not limited to, adopting a new method of electing a governing body, modifying district boundaries, or amending a voting rule or qualification.

(3) Prevailing defendants may recover an award of fees or costs pursuant to RCW 4.84.185. [2023 c 56 s 10; 2018 c 113 s 405.]

Effective date—2023 c 56: See note following RCW 29A.92.720.

RCW 29A.92.700 Not applicable to certain political subdivisions. The provisions of RCW 29A.92.005 through 29A.92.030, 29A.92.060 through 29A.92.130, and 29A.92.900 are not applicable to cities and towns with populations under one thousand or to school districts with K-12 full-time equivalent enrollments of less than two hundred fifty. [2018 c 113 s 501.]

RCW 29A.92.710 Other laws superseded. This chapter supersedes other state laws and local ordinances to the extent that those state laws or ordinances would otherwise restrict a jurisdiction's ability to comply with this chapter. [2019 c 64 s 15; 2018 c 113 s 503.]

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

RCW 29A.92.720 Construction of laws concerning right to vote.

In further recognition of the protections for the right to vote provided by the Constitution of the state of Washington, statutes, rules and regulations, and local laws, town charters, and ordinances related to the right to vote shall be construed liberally in favor of:

- (1) Protecting the right to cast an effective ballot;
- (2) Ensuring that eligible voters are not impaired in registering to vote or voting including having their votes counted; and
- (3) Ensuring that voters of race, color, and language minority groups have equitable access to fully participate in the electoral process in registering to vote and voting free from improper dilution or abridgement of voting power. [2023 c 56 s 1.]

Effective date—2023 c 56: "This act takes effect January 1, 2024." [2023 c 56 s 14.]

RCW 29A.92.900 Short title. This chapter may be known and cited as the Washington voting rights act of 2018. [2019 c 64 s 16; 2018 c 113 s 101.]

Explanatory statement—2019 c 64: See note following RCW 1.20.110.