
Memo

TO: Wenatchee City Council

AND TO: Frank Kuntz, Mayor

FROM: Steve D. Smith

DATE: April 18, 2018

RE: Highlights of the Washington Voting Rights Act of 2018

The Washington legislature passed the Washington Voting Rights Act of 2018 during the 2018 winter session of the legislature.

The Act remedied some of the limitations in the prior voting law, the primary limitation being the one related to districts where the individual districts could nominate their candidates in the primary, but then the candidates selected in the primary were subject to city-wide voting during the general election. This was an impediment to making effective change to voting outcomes through adoption of a districting system.

The Act says that no method of electing the governing body of a city may be imposed or applied in a manner that impairs the ability of members of a protected class to have an equal opportunity to elect candidates of their choice.

The Act authorizes voluntary changes to electoral processes, including implementing a district-based election system.

Timing:

If a new election system is adopted between the first Tuesday after the first Monday of November and on or before January 15 of the following year, the city shall order new elections to occur at the next succeeding general election.

Otherwise, the new election process will occur at the general election of the following calendar year.

District Criteria:

District-based systems 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 city.
- (b) Each district shall be reasonably compact.
- (c) Each district shall consist of a 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.

Re-Districting:

Once a districting system is established, the city has an ongoing obligation to review and re-district, if necessary, to remain in compliance with the Act.

- No later than 8 months after its receipt of federal decennial census data, the city council must prepare a plan for re-districting its districts to remain consistent with the Act.

Citizen Challenges:

The Act gives voters within the city a process to follow if they intend to challenge the City's electoral system.

The voter must first give notice. The notice can include a proposed remedy. The Act provides a list of factors to consider in determining whether a municipality is in violation of the Act, including:

- (a) Elections exhibit polarized voting;
- (b) Members of a protected class do not have an equal opportunity to elect candidates of their choice.

The Courts are directed by the Act to analyze prior elections.

Cities are required to first work in good faith with the person providing notice to remedy the alleged violation. This includes review of relevant electoral data, demographic data, and other relevant information.

If the city adopts a remedy that takes into account the notice, the city must seek a court order acknowledging that the remedy complies with the Act. The person who submitted the notice may support or oppose such an order. If the court concludes that the remedy complies with the Act, an action under the Act may not be brought against the city for four years, so long as there are no changes or deviations to the remedy during that four-year period.

If a city does not obtain a court order implementing a remedy after a notice from a voter challenging the voting system, after 180 days, any voter may bring an action against the city. After 2021, the city only has 90 days to obtain a court order after receiving a notice.

Even after the timeline set up has passed, any voter in the city can bring a cause of action for violation of the Act.

Attorney's fees, costs, and expert witness fees can be granted to prevailing parties in causes of action under the Act, except that cities can only recover expenses under RCW 4.84.185, which is for the recovery of fees and costs in defense of a frivolous action.