
SUBSTITUTE SENATE BILL 6381

State of Washington

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2012 Regular Session

By Senate Government Operations, Tribal Relations & Elections
(originally sponsored by Senators Prentice, Pridemore, Nelson, Chase,
Murray, Conway, Kline, Harper, Keiser, and McAuliffe)

READ FIRST TIME 02/03/12.

1 AN ACT Relating to the Washington voting rights act; and adding a
2 new chapter to Title 29A RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This act may be known and cited as the
5 Washington voting rights act of 2012.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise.

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

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

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

16 (c) One which combines at-large elections with district-based
17 elections.

1 (2) "District-based elections" means a method of electing members
2 to the governing body of a political subdivision in which the candidate
3 must reside within an election district that is a divisible part of the
4 political subdivision and is elected only by voters residing within
5 that election district. District-based elections shall include
6 elections where only one official is elected in a district-based
7 election district and shall include the election districts within
8 existing boundaries of a political subdivision.

9 (3) "Political subdivision" means any county, city, town, district,
10 or other municipal or quasi-municipal corporation organized pursuant to
11 state, county, or local law.

12 (4) "Protected class" means a class of voters who are members of a
13 race, color, or language minority group, as this class is referenced
14 and defined in the federal voting rights act 42 U.S.C. Sec. 1973 et
15 seq.

16 (5) "Racially polarized voting" means voting in which there is a
17 difference in the choice of candidates or other electoral choices that
18 are preferred by voters in a protected class, and in the choice of
19 candidates and electoral choices that are preferred by voters in the
20 rest of the electorate. A plaintiff may establish and a court may find
21 that elections are characterized by racially polarized voting based on
22 relevant and admissible evidence, including bivariate ecological
23 inference and ecological regression analysis, homogenous precinct
24 analysis, and other evidence and methodologies which a court finds
25 relevant and admissible to prove that elections are characterized by
26 racially polarized voting.

27 NEW SECTION. **Sec. 3.** (1) At-large elections and district-based
28 elections may not be drawn or maintained in a manner that denies an
29 equal opportunity of a protected class to elect candidates of its
30 choice or an equal opportunity to influence the outcome of an election,
31 as a result of the vote dilution of voters who are members of a
32 protected class.

33 (2) An at-large election district or a district-based election
34 district is dilutive, and in violation of this section, when it is
35 shown that:

36 (a) A political subdivision utilizes an at-large or district-based
37 election district;

1 (b) The elections in the political subdivision are racially
2 polarized;

3 (c) The racially polarized voting in the political subdivision
4 results in vote dilution where the protected class members do not have
5 an equal opportunity to elect candidates of their choice or an equal
6 opportunity to influence the outcome of an election; and

7 (d) A remedy exists that will provide members of the protected
8 class with an equal opportunity to elect candidates of their choice or
9 an equal opportunity to influence the outcome of an election. Such a
10 remedy will not adversely affect or diminish the impact of those
11 district-based election districts that are protected by the federal
12 voting rights act, 42 U.S.C. Sec. 1973, et seq.

13 (3) The fact that members of a protected class are not
14 geographically compact or concentrated to constitute a numerical
15 majority in a proposed district-based election district shall not
16 preclude a finding of racially polarized voting that results in vote
17 dilution.

18 (4) Racially polarized voting that results in vote dilution is
19 shown by demonstrating that there is a difference in voting preferences
20 between members of a protected class and the rest of the electorate.
21 Such a difference in voting preferences may be demonstrated by the
22 methodologies specified in section 2(5) of this act or other evidence
23 and methodologies that a court finds relevant and admissible.

24 (5) In determining whether there is racially polarized voting that
25 results in vote dilution under this section, the court shall analyze
26 elections for members of the governing body of the political
27 subdivision or in elections incorporating other electoral choices by
28 the voters of the political subdivision. Only elections conducted
29 prior to the filing of an action pursuant to this chapter shall be used
30 to establish or rebut the existence of racially polarized voting that
31 results in vote dilution.

32 (6) The court shall determine whether racially polarized voting
33 that results in vote dilution has occurred by examining results of
34 elections in which at least one candidate is a member of a protected
35 class or elections involving ballot measures, or other electoral
36 choices that affect the rights and privileges of members of a protected
37 class who are voters of the political subdivision which is the subject
38 of an action filed pursuant to this chapter.

1 (7) The election of candidates who are members of a protected class
2 and who are preferred by voters of the protected class and who were
3 elected prior to the filing of this action pursuant to this chapter, as
4 determined by an analysis of voting behavior, shall not preclude a
5 finding of racially polarized voting that results in vote dilution.

6 (8) Members of different protected classes may file an action
7 jointly pursuant to this chapter if they demonstrate to the court that
8 their combined voting preferences as a group are different from the
9 rest of the electorate and demonstrate that there is racially polarized
10 voting that results in vote dilution consistent with the standards
11 established in this section.

12 (9) In an action filed pursuant to this section, ninety days after
13 the defendant or defendants file an answer, the plaintiff shall
14 disclose to the other parties the identity and written report of any
15 expert witness retained to testify regarding the existence of racially
16 polarized voting that results in vote dilution in elections occurring
17 within the political subdivision that is the subject of the action.
18 This time period may be adjusted by the court for good cause, or by
19 written agreement of the parties.

20 (10) Ninety days after the defendant or defendants have been served
21 with the identity and written report of the expert witness retained by
22 the plaintiff or plaintiffs, the defendant or defendants shall disclose
23 to the plaintiffs the identity of any expert witness retained to
24 testify regarding the existence of racially polarized voting.

25 (11) Disclosure and written reports shall not be required for an
26 expert that is retained as a nontestifying consultant.

27 (12) The fact that members of a protected class are not
28 geographically compact or concentrated to constitute a majority within
29 an existing district-based election may not preclude a finding of
30 racially polarized voting that results in vote dilution.

31 (13) Proof of an intent on the part of the voters or elected
32 officials to discriminate against a protected class is not required.

33 (14) For purposes of any applicable statute of limitations, a cause
34 of action under this section arises every time there is an election
35 pursuant to an at-large method of election or a district-based method
36 of election, or the creation of a district-based election district that
37 is the subject of an action pursuant to this section.

1 (15) The plaintiff's right to the secrecy of the plaintiff's vote
2 is preserved and is not waived by the filing of an action pursuant to
3 this section.

4 (16) In seeking a temporary restraining order or a preliminary
5 injunction, the court shall not require a plaintiff to post a bond or
6 any other security in order to secure such equitable relief.

7 (17) An action filed pursuant to this section is a suit based in
8 equity. There is no right to trial by jury.

9 NEW SECTION. **Sec. 4.** (1) Upon a finding of a violation of section
10 3 of this act, the court shall implement appropriate remedies,
11 including the imposition of a district-based election district that is
12 tailored to remedy the violation. The court may direct the affected
13 jurisdiction to draw or redraw district boundaries or appoint an
14 individual or panel to draw or redraw district lines.

15 (2) In tailoring a remedy consisting of district-based elections,
16 the court shall implement a district-based election district that is
17 geographically compact. The fact that members of a protected class do
18 not constitute a numerical majority within a proposed district-based
19 election district shall not preclude the implementation of such a
20 district-based election district. In tailoring a remedy, the court
21 shall order the implementation of a district-based election district
22 where the members of the protected class are not a numerical majority
23 in order to provide the protected class an equal opportunity to elect
24 candidates of their choice or an equal opportunity to influence the
25 outcome of an election.

26 (3) In tailoring a remedy after a finding of a violation of section
27 3 of this act, the court shall order new elections to be scheduled at
28 the next date authorized by state law for conducting elections. All of
29 the positions that were elected pursuant to the at-large or
30 district-based election district that was the subject of the action
31 filed pursuant to this chapter and have at least two years remaining in
32 their terms of office shall be subject to new elections in order to
33 continue their term of office.

34 NEW SECTION. **Sec. 5.** (1) In any action to enforce this chapter,
35 the court shall allow the prevailing plaintiff reasonable attorneys'
36 fees and a fees multiplier that takes into account the contingency, the

1 novelty and complexity of the filed action, and litigation expenses
2 including, but not limited to, expert witness fees and expenses as part
3 of the costs.

4 (2) Prevailing defendants may recover costs only if the court finds
5 the action to be frivolous, unreasonable, or without foundation,
6 pursuant to RCW 4.84.185.

7 (3) A fees multiplier is determined by the court by multiplying a
8 numerical value and the fees lodestar. The fees lodestar is determined
9 by multiplying the number of reasonable hours expended by an attorney
10 or support personnel, such as law clerks, paralegals, and legal
11 assistants in the action filed pursuant to this chapter, times a
12 reasonable hourly rate that is consistent with the rates charged by
13 attorneys and firms located within a city or an area where the
14 attorneys and firms filing the action are located.

15 (4) A plaintiff shall be deemed to be a prevailing party for
16 purposes of this section if the political subdivision which is the
17 subject of an action filed pursuant to this chapter adopts or
18 implements a district-based election district after the action is filed
19 that is different from the district-based election district that is the
20 subject of the action filed.

21 (5) A prevailing plaintiff shall recover, as part of reasonable
22 attorneys' fees and fees multiplier award, work performed in any
23 ancillary administrative, legislative, or citizen redistricting
24 commission proceeding where the prevailing plaintiff party sought to
25 secure a district-based election district that was different from the
26 district-based election district ultimately adopted by a governing body
27 or a citizen's redistricting commission and that was ultimately
28 declared by a court to be in violation of section 3 of this act in an
29 action filed by the prevailing plaintiff.

30 NEW SECTION. **Sec. 6.** Any voter who is a member of a protected
31 class and who resides in a political subdivision where a violation of
32 section 3 of this act is alleged may file an action in the superior
33 court of the county in which the political subdivision is located. If
34 the action is against a county, the action may be filed in the superior
35 court of such county, or in the superior court of either of the two
36 nearest judicial districts as determined pursuant to RCW 36.01.050(2).

1 There is no requirement that an action filed pursuant to this chapter
2 be filed as a class action.

3 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
4 a new chapter in Title 29A RCW.

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