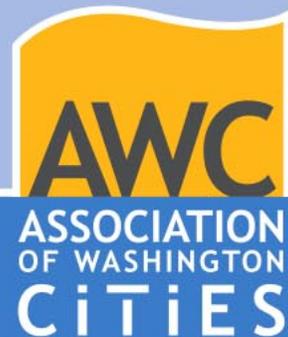


Washington's Voting Rights Act

AWC webinar
April 25, 2018

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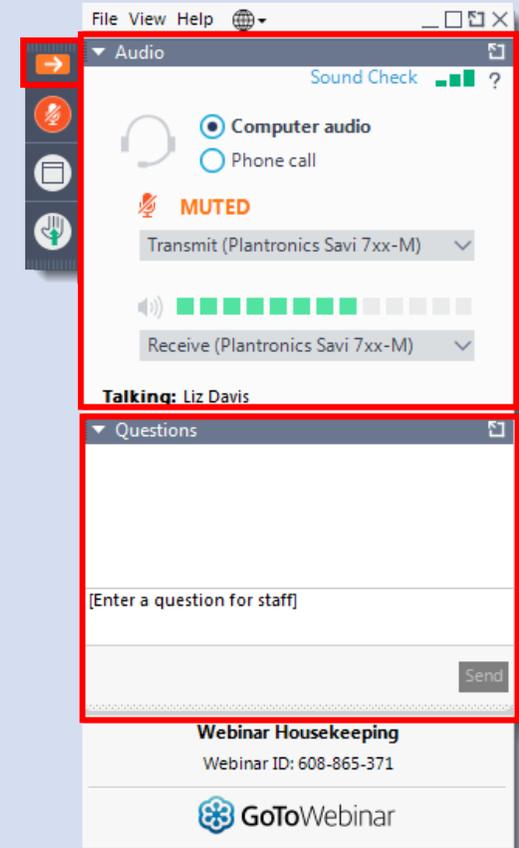
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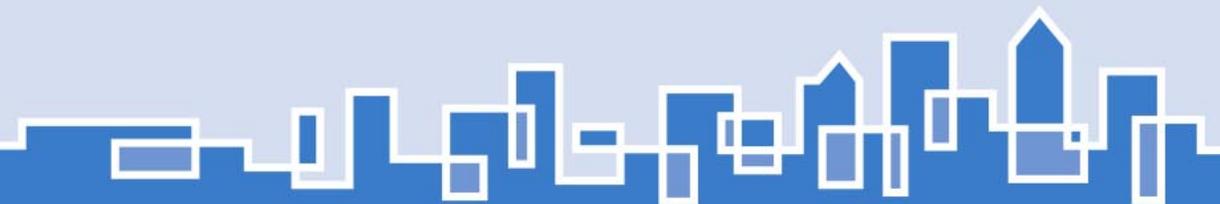
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Today's speakers



**Senator
Rebecca Saldaña (D)**
Majority Whip
37th Legislative District



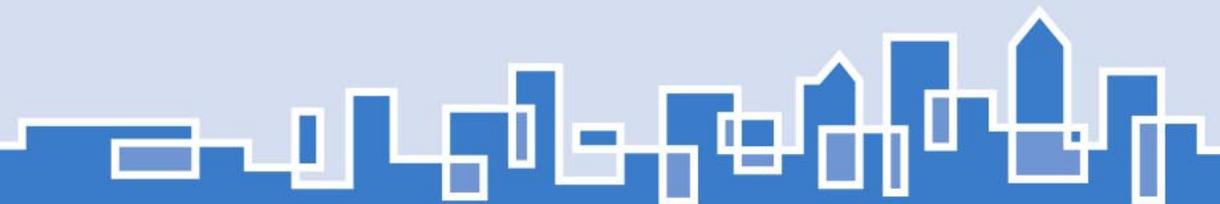
**Representative
Mia Gregerson (D)**
33rd Legislative District



Shannon McClelland
Legislative & Policy Analyst
AWC



John Safarli
Partner
Floyd, Pflueger & Ringer, P.S.



Overview

- **Introduction by the legislative sponsors**
 - Senator Rebecca Saldaña
 - Representative Mia Gregerson
- **Components of the new law**
 - Shannon McClelland, AWC
- **Issues to think about – knowing your risk and seizing your opportunity**
 - John Safarli, Floyd, Pflueger & Ringer, P.S.
- **Q&A**



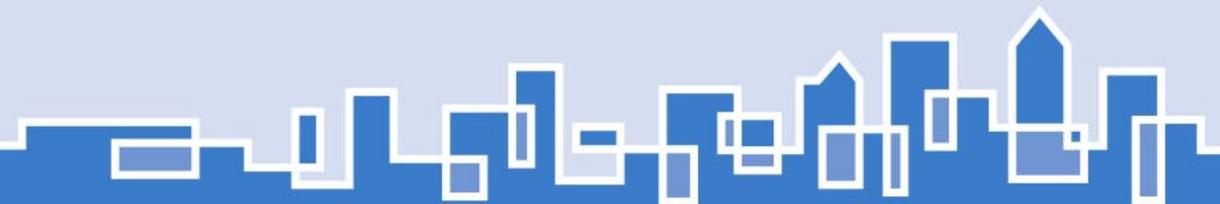
Legislative sponsors



Senator Rebecca Saldaña (D)
Majority Whip
37th Legislative District



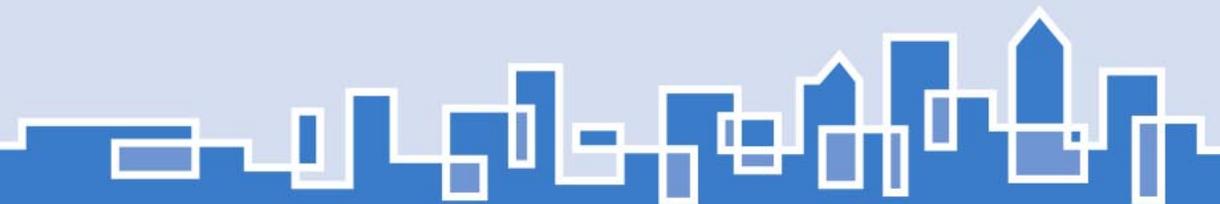
Representative Mia Gregerson (D)
33rd Legislative District



WA Voting Rights Act

ESSB 6002 has four key parts:

1. Voluntary change to electoral system – effective June 7, 2018
2. Voter initiated change – Notice provision – effective July 19, 2018
3. Litigation – Action brought in state court
4. Safe harbor provision



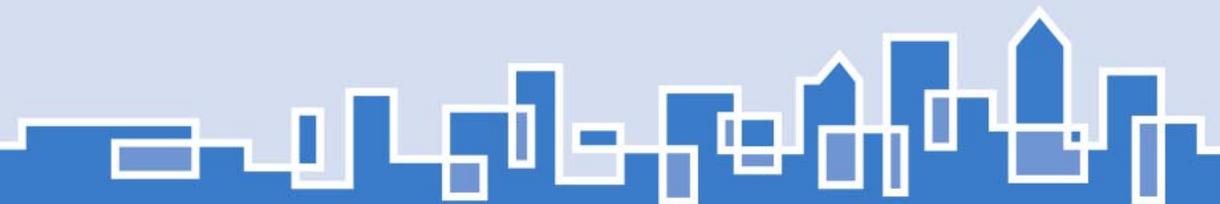
Does the law apply to my jurisdiction?

Applies to

- **Cities**
- Counties
- School districts
- Fire districts
- Ports
- Public utility districts

Exemptions

- **Cities under 1,000 population**
- School districts with less than 250 students



Key definitions

Polarized voting

“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*, and in the choice of candidates and electoral choices that are *preferred by voters in the rest of the electorate*”



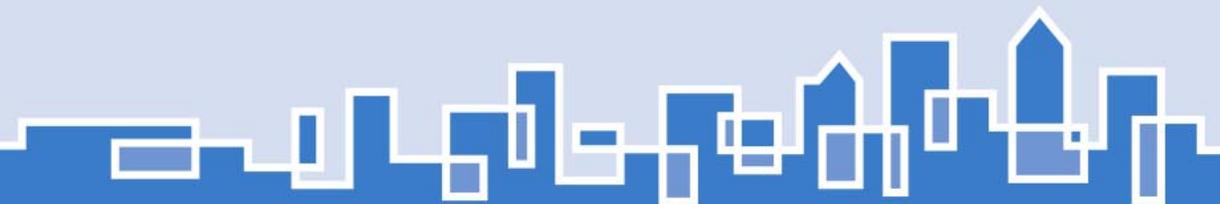
Key definitions

Protected class

“a class of voters who are members of a **race, color, or language minority** group as ... referenced and defined in the federal voting rights act ...”

Note: The Federal VRA defines “language minority group” as:

- American Indian
- Asian American
- Alaskan Natives
- or of Spanish heritage

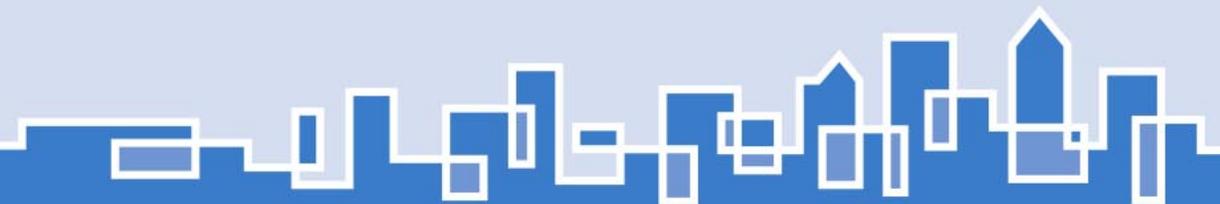


What the Act prohibits

“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 to have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgement of the rights of voters who are members of a protected class.”

The problem the law is trying to address:

The structure or practices of an election system that dilutes the votes or limits the rights of a protected class, resulting in an unequal opportunity to elect candidates of their choice.



Voluntary change to electoral system

- Proactive change to remedy a potential violation
- Including, but not limited to, district-based general elections
- Requires substantial public process



Illustration by James Steinberg



Voluntary change – Public process

- **Public notice** prior to adoption of proposed remedy
- In addition, if **significant segment** of residents have limited English proficiency:
 - **Written and verbal** notice **and**
 - **Aired** radio and/or TV **public service announcements**
(Significant segment = **lesser of 5% or 500** city residents)
- At least **one public hearing** at least one week before adoption



Notice process

- By voter in jurisdiction
- Identify protected class
- Violation due to polarized voting and vote dilution or limiting of voting rights
- Propose type of remedy

Notice

Remedy

- 180 days (then voter can file suit)
- 90 days after July 2021
- Promptly make notice public
- Work in good faith
- Adopted

- Court ordered approval
- Facts and inferences favorable to voter
- Rebuttable presumption of invalid remedy

Court

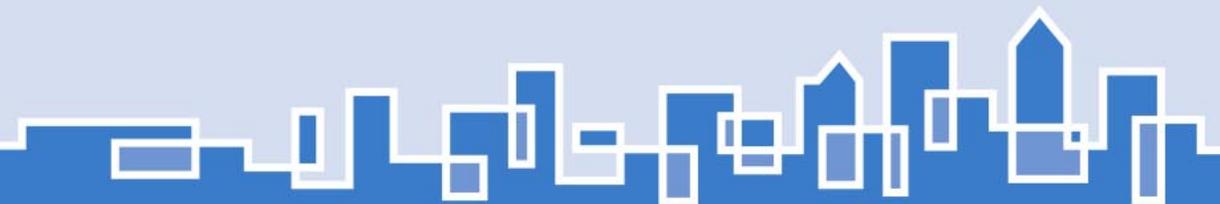


Court challenge

Voter may file a lawsuit in state court if notice period does not result in a court-approved remedy

Violation if:

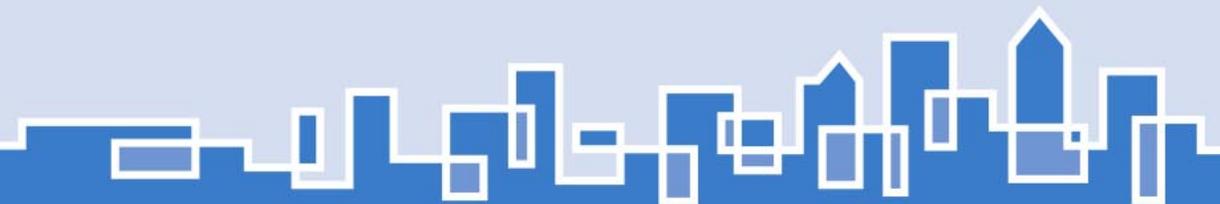
- 1. Elections exhibit polarized voting; and**
- 2. Dilution or abridgment of rights** of members of a protected class(es) results in unequal opportunity



Court challenge

Evidence

- **Data from elections after suit is filed is allowed** to establish racially polarized voting, but weighted less than prior election data
- **Lack of geographical compactness of protected class(es)** does not prevent a violation, but it may inform the remedy
- **Voter does not need to prove intent** by the city to dilute vote
- **History of past discrimination in other areas** – such as education, employment, and health – can be a factor



Court challenge

Court remedy

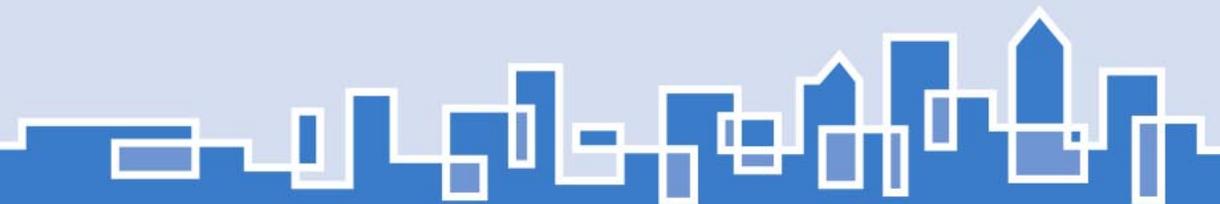
- Including, but **not limited to, district elections**
- The court must order **new elections**, the timing is dependent on the order

Court costs & fees

- **Only available to the city if voter's claim is frivolous**
- Court's discretion whether to allow for prevailing voter

Additional requirement:

Publish the **outcome, summary, and legal costs of court action on city website** within 30 days



Safe harbor

- **Four years** for a city that receives a court-ordered remedy
- **Exception** if the city makes changes to election system that impacts remedy
- **Made a change under the federal VRA in the last decade?**
Safe harbor until after a redistricting change due to 2020 Census.



Opportunities and Risks

- ▶ **Opportunities**: Cities now have the authority to voluntarily change their own election system to ensure the ability of protected-class voters to elect their candidates of choice
- ▶ **Risks**: Cities that would otherwise be safe from a vote-dilution claim under the federal Voting Rights Act are likely vulnerable to a vote-dilution claim under the WVRA

Opportunities

- ▶ Voluntarily changing an election system
 - ▶ “A political subdivision . . . is authorized to change its electoral system . . . to remedy a potential violation of . . . this act.” - Sec. 201(1)
 - ▶ **Questions going forward**
 - ▶ To invoke the authority to voluntarily change an election system, does a city need to develop evidence that the status quo violates the WVRA? (*cf.* AGO 2016 No. 1)
 - ▶ Or can a city still invoke this new authority even if it has no idea whether the status quo violates the WVRA?
 - ▶ What if a city wants to change its election system for reasons that have nothing to do with race, ethnicity, or language?

Opportunities

- ▶ Voluntarily changing an election system
 - ▶ What kind of system may be adopted?
 - ▶ All single-member districts
 - ▶ Hybrid system (mixture of at-large and single-member districts)
 - ▶ Revising district boundaries for an existing single-member district system
 - ▶ Regardless of the system adopted, “[d]istrict boundaries may not be drawn or maintained in a manner that creates or perpetuates” vote dilution of a protected class - Sec. 201(3)(d)
 - ▶ What kind of system may not be adopted?
 - ▶ Cumulative or limited voting systems

Opportunities

- ▶ Voluntarily changing an election system
 - ▶ Considerations
 - ▶ Form a committee to study options and plans
 - ▶ WVRA requires only one public meeting, but recommend multiple meetings
 - ▶ Listening sessions
 - ▶ Create an online “hub” where proposals, schedules, timelines, etc. are centrally-located and accessible (public comment section?)
 - ▶ Timing matters
 - ▶ If a plan is adopted during the 2 months between mid-November and January 15, then new elections must be held under the new plan at the following general election in November
 - ▶ If a plan is adopted during the 10 months between January 16 and mid-November, then elections will be held under the existing system at the next general election, but fresh elections must be held under the new plan in the following calendar year

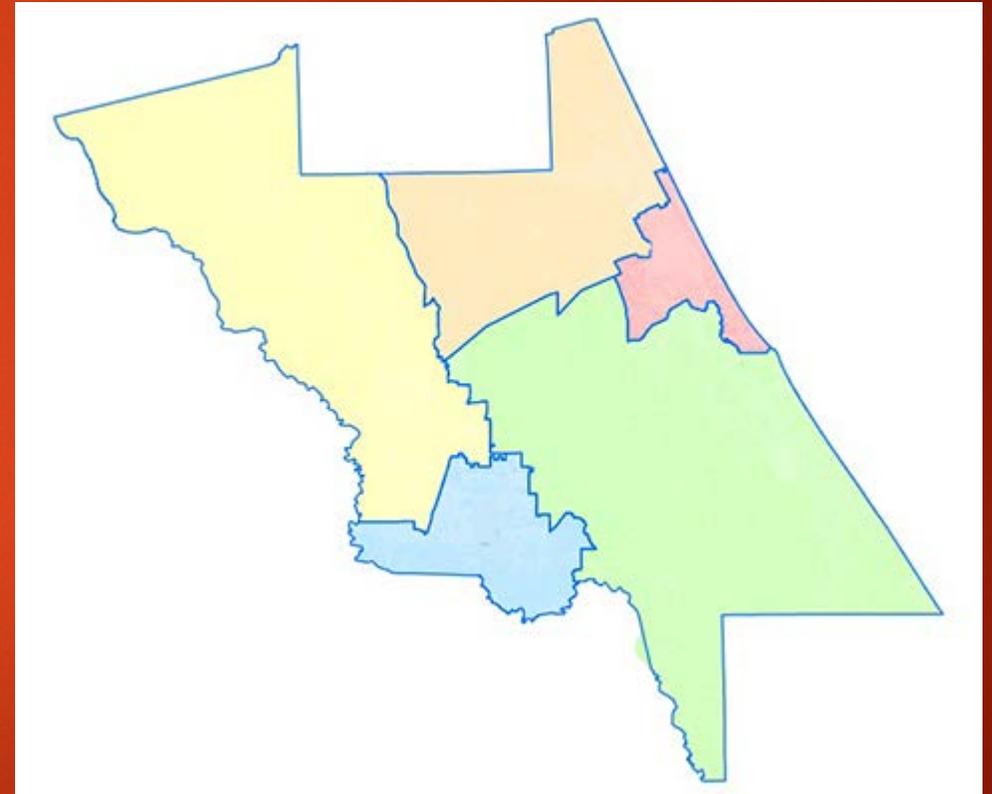
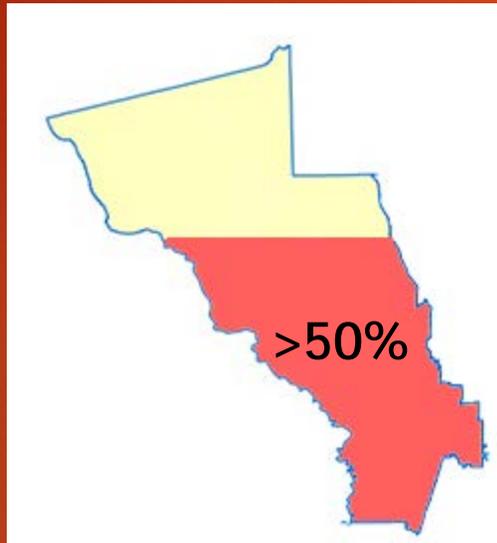
Opportunities

- ▶ Voluntarily changing an election system
 - ▶ Considerations
 - ▶ In addition to committee study and public feedback, utilize counsel and a demographer throughout the process
 - ▶ Explore strategic partnerships with local governments that have the same or similar geographic boundaries (e.g., school districts)

Risks

- ▶ Cities that would be safe from a vote-dilution claim under the federal VRA are likely vulnerable to a vote-dilution claim under the WVRA

Federal VRA



Under the federal VRA, plaintiff must show that protected-class voters could be at least 50% of the eligible voter population in at least one single-member district (called a "majority-minority district")

Risks

- ▶ Under the WVRA, there is no “majority-minority district” requirement
 - ▶ “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 act” – Sec. 302(2).



Risks

▶ Considerations

- ▶ Cities that have few protected-class voters—or who have protected-class voters spread out across the city—are, in theory, vulnerable to a vote-dilution claim
- ▶ It is unclear what criteria courts will use in evaluating competing proposals where protected-class voters are few in number or geographically dispersed
 - ▶ If protected-class voters are the numerical minority in at-large elections but are also the numerical minority across all single-member districts, how will courts decide which system leaves protected-class voters “better off”?
 - ▶ Possible answer: Dividing a city into single-member districts will provide protected-class voters with better electoral opportunities in the future as the protected class continues to increase demographically.
 - ▶ Other possible answer: Create coalition or crossover districts
- ▶ The WVRA appears to allow vote-dilution claims to be brought against single-member district systems if the voter believes that the district lines could be drawn in a way that better serves the protected class

Risks

▶ Risk factors

- ▶ Size and concentration of protected-class voters
- ▶ Complaints about unfairness of existing election system
- ▶ History of candidates supported by protected-class voters who have been unsuccessful
 - ▶ Candidates supported by protected-class voters are **not** necessarily members of the protected class themselves
 - ▶ Racially- or ethnically-charged issues within the community
 - ▶ Geographically-based issues
- ▶ If you suspect a potential claim, do not wait until notice is received
 - ▶ Early awareness will avoid racing against the clock

Q&A

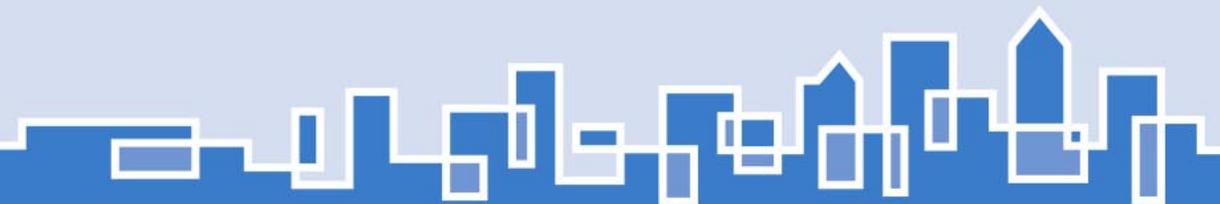
What you can do now:

- Know your demographics
- Evaluate past elections
- Engage with community groups on this issue
- Talk with your attorney

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Stay informed:

- AWC webpage on VRA
- May 3 – **WSAMA** (municipal attorneys) **spring conference**: VRA session
- May/June – AWC **CityVision** magazine: VRA article
- June 27-29 – AWC Annual Conference: VRA session



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