

WASHINGTON VOTING RIGHTS ACT (WVRA): NEXT STEPS

Strategies and Suggestions

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Presenter



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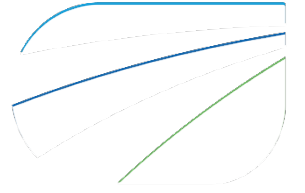
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Outline



- Evaluating and responding to a WVRA Notice.
- How counties are handling these notices.
- Good faith collaboration is required by law.
- WVRA remedies depend on an accurate analysis of population demographics and voting statistics.
- Superior Court approval is required.
- 2019 WVRA amendment clarified timing of new district-based elections.
- Recent WVRA Notices: Ferry Co. & Yakima Co.
- Questions and Answers





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- *Established: 1934, 85 years of service to local governments*
- *Educates and informs on legal, policy, and finance issues*
- *Provides independent, nonpartisan research & guidance*
- *Does not lobby or take sides on policy issues or disputes*
- *Does not provide legal representation or serve as legal counsel*

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Prosecuting Attorneys are copied on our inquiry responses:

“Initially, please be advised that I am copying your county prosecuting attorney because we are required to do so pursuant to [RCW 43.110.030\(3\)](#) through MRSC’s contract with the state Department of Commerce with regard to requests for legal services from counties.”

For County Legal Issues We Refer to PAOs



“We recommend you consult with your county prosecuting attorney’s office for legal advice. MRSC provides legal guidance that is general and not meant to contradict or take the place of legal advice based on specific facts. We defer to the legal opinions of your agency’s attorneys.”

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Washington Voting Rights Act (WVRA)



New Law passed in 2018. Chapter 29A.92 RCW.

Based on California's VRA and goes further than the federal VRA

Applies to all counties and most other municipalities including cities, towns, school districts with populations over 1,000 and to many outer special purpose districts.

Washington Voting Rights Act (WVRA)



Municipalities authorized to voluntarily change voting systems.

Voters in the municipality may file a notice to seek a change in the voting systems. A remedy happens either with negotiations with a municipality or, absent an agreement, by court order.

Superior Court approval is required.

WRVA Voter Challenges to Electoral System – Notice Requirements



RCW 29A.92.060 provides:

(1) A voter who resides 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](#).

WRVA – Requires a Good Faith Effort to Implement a Remedy



RCW 29A.92.070(1) provides:

(1) The political subdivision shall work in good faith with the person 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.

WRVA – RCW Requires Court Approval of a Remedy for a “plausible violation”.



RCW 29A.92.070(2) provides:

*(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.*

WVRA Remedy – Stipulation to Remedy



RCW 29A.92.070(4) provides:

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

Timing for Adoption of a Remedy



RCW 29A.92.080:

Until July 1, 2021, a municipality has 180 days from receipt of a voter challenge notice to adopt a remedy AND obtain a court order approving the remedy.

After July 1, 2021, this time period is 90 days.



Timing of next elections after a remedy

The timing provisions in the WVRA for the first elections under a newly adopted or court ordered remedy of a WVRA potential violation are triggered by the date of court approval.

If there is an appeal of a court order, then likely look at the date of the mandate when the appeal is over.

If court approval or a court ordered remedy is entered between election day in November and January 15th, then new elections would happen at the general election. (whether or not it is an odd or even year).

Timing of Next Elections After Remedy



RCW 29A.92.110(3) provides:

(3) *In tailoring a remedy after a finding of a violation of RCW [29A.92.020](#):*

*(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 (3). The governing body may subsequently choose to stagger the terms of its positions.*

2019 WVRA Amendment: Timely Elections



In 2019 SB 5266 amended the 2018 Washington Voting Rights Act (WVRA). RCW 29A.92.050 now provides for prompt local elections for all positions when a remedy changing a local government's electoral system under the WVRA is adopted, either voluntarily or by court order.

This means that a districting or redistricting remedy to resolve potential voting rights violations will lead to elections for all positions in the next general election. This is the case even when the next general election is a national election (held in even years) rather than a municipal election (odd years).

WVRA: Recent Notices – My thoughts



Ferry County – A January 9, 2020 notice letter (2 pages) did not include the name and contact information of a voter in the county. Is this required by the RCW? Letter “on behalf of Colville tribal members residing in Ferry County”. The notice proposes a remedy of “in district voting” and invites a voluntary remedy to avoid a court action.

Yakima County – A January 15, 2020 notice letter (6 pages) was presented on behalf of four named voters and OneAmerica. Challenging at-large voting and proposing a ranked choice voting system.



2018 MRSC Blog Articles - WVRA

[The Future of Voting in Washington](#)

Mar 29, 2018 ... With the Voting Rights Act of 2018, Washington State took a step towards ensuring the right to vote for all Washingtonians, especially those in certain protected classes. This article provides an overview of the new law.

[WVRA: To Change or Not to Change?](#)

May 25, 2018 ... The new Washington Voting Rights Act (WVRA) gives most municipalities the authority to change their election systems to remedy potential issues relating to equal voting opportunities for members of certain protected classes. This blog answers some common questions about this process.

We are in the early innings of the WVRA



The Washington Voting Rights Act is a new law and caselaw is likely to be developed over time.

Litigation of disputes about whether and to what extent remedies are needed will develop over time.

We are watching and learning from the first experiences and test cases for voluntary adoption of remedies and handling of notices of voter challenges to potential violations of the WRVA.



Questions? Comments? Thank you



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