

Washington Voting Rights Act (WVRA): *Strategies and Suggestions*

JOHN A. SAFARLI

FLOYD, PFLUEGER & RINGER, P.S.



Where do you find your County?

- Have not received a letter / unsure if one is coming
- Have not received a letter / anticipate or know one is coming
- Have received a letter

Have not received a letter / unsure if one is coming

- Evaluate current community mood and demographics
 - Public comment / social media
 - Changing demographics trends
- Explore option of voluntarily changing election system
 - Executive session
 - Create a record of exploration
 - Voluntary change is its own process – RCW 29A.92.050
 - “Potential violation” clause – RCW 29A.92.040(1)

Have not received a letter / anticipate or know one is coming

- Speed up process to explore voluntary change
- Retain outside counsel and coordinate with experts
 - Have a “hit the ground running” package ready
 - Develop knowledge about demographics, previous elections, potential options, etc.

Have received a letter

- No lawsuit may be filed until 180 days after County receives notice
 - Changes to 90 days on July 21, 2021
 - COVID-19 impact
- The County “shall promptly make such notice public”
- Problems with notice
 - Whom is it served on?
 - What information must it contain?
 - Residence of voter?
- Lawsuit does need to be filed by the same person
 - Lawsuit can be filed by “any voter” of the County

Have received a letter

- The County “shall work in good faith” with the person giving notice
 - Information-sharing process
- Remember that, if a County wants to adopt a proposal after receiving notice, a court order must be obtained within 180 days of the notice to avoid a lawsuit
 - Otherwise, a lawsuit may be filed on the 181st day

Have received a letter - routes

- Routes you can take after receiving a letter:
 - Do nothing – maintain the status quo and defend it in court
 - Agree to replace the status quo but disagreement about the remedy
 - Agree to replace the status quo and agree about the remedy

Have received a letter - routes

- Do nothing – maintain the status quo and defend it in court
 - Retain outside legal counsel to evaluate strength of lawsuit
 - Two elements of a claim:
 - (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.
 - Lawsuit that must be filed in superior court of the County or either of the nearest judicial districts
 - Attorney fees are recoverable
 - Uncertain area of the law

Have received a letter - routes

- **Agree to replace the status quo but disagreement about the remedy**
 - County submits its proposal to the superior court (which one?) for approval
 - The superior court must construe facts and inferences in favor of anyone opposing the County's proposal
 - The superior court also has a rebuttal presumption that the County's proposal will be declined
 - If the superior court agrees with the County's proposal, then safe harbor for 4 years and no attorney fees to the plaintiffs
 - If the superior court disagrees with the County's proposal, the court will fashion its own remedy (probably the remedy proposed by the other side or through court-appointed expert)

Have received a letter - routes

- Agree to replace the status quo and agree about the remedy
 - Unclear if any non-parties could seek to intervene – *“The person who submitted the notice may support or oppose such an order”*
 - Same challenges – construing facts and inferences against the proposal (even if a joint proposal) and rebuttable presumption that proposal will be declined (even if a joint proposal)

What happens if a remedy is ordered or agreed to?

- Depends on when

- Voluntary change – when was the new plan adopted?
- Court process – when was the court order issued?

- **Scenario #1**

- Between (a) 1st Tuesday after the first Monday of November and (b) January 15th of the following year
- All Commissioners must run for office under the new system in November of the following year

- **Scenario #2**

- Between (a) January 16th and (b) before the 1st Tuesday after the first Monday of November
- Elections held under status quo (including the Commissioners that would normally be running) occur during the November of the following year, but all Commissioners must run for office in the November of the year after that

Other topics

- **Safe harbor**

- Does not apply to voluntary change process
- Only applies if the County adopted a plan after receiving notice or if a court imposes a plan
- Four-year statute of limitations for state law WVRA claims (provided there are no further changes)
- For any County who adopted a plan under the federal VRA from June 7, 2008, to June 7, 2018, no state law WVRA claim may be brought until after the 2020 Census

- **Voluntary change process**

- Written notice and radio/television public service announcements in English and any language that 5% or 500 residents understand (whichever is fewer)
- At least one public meeting one week before adoption

- **How does the upcoming Census impact things?**

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