

State Voting Rights Act



MODEL STATUTORY LANGUAGE

An Act to Protect State Voting Rights

Section 1: SHORT TITLE

This Act shall be called the “State Voting Rights Act of 20XX.”

Section 2: PURPOSE

This Act promotes equal voting opportunities in political establishing a cause of action to redress racial minority vote dilution and provide appropriate remedies.

Section 3: DEFINITIONS

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “At-large method of election” means any of the following methods of electing members of the governing body of a political subdivision:

- (a) One in which the voters of the entire jurisdiction elect the members to the governing body;
- (b) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body; or
- (c) One that combines the criteria in (a) and (b) of this subsection.

(2) “District-based elections” means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(3) “Polarized voting” means 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. A plaintiff may establish, and a court may find, that elections are characterized by polarized voting based on relevant and admissible evidence.

(4) “Political subdivision” means any county, city, town, school district, fire district, port district, or public utility district.

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(5) “Protected class” means a class of voters who are members of a race, color, or language minority group.

(6) “Voting method” means any method of election where voters make choices amongst candidates, referenda questions, or other options.

Section 4: PROHIBITED ACTIVITIES

(1) Neither at-large elections nor district-based elections may be imposed or applied in a manner that denies a protected class an equal opportunity to elect candidates of its choice, or an equal opportunity to influence the outcome of an election.

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

- (a) The elections in the political subdivision exhibit polarized voting; and
- (b) Members of a protected class do not have an equal opportunity to elect candidates of their choice, or an equal opportunity to influence the outcome of an election.

(3) 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 polarized voting that results in an unequal opportunity for a protected class to elect candidates of their choice, or to influence the outcome of an election.

(4) In determining whether there is polarized voting under this section, the court shall analyze elections for members of the governing body of the political subdivision, or elections incorporating other electoral choices by the voters of the political subdivision.

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

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(6) The election of candidates who are members of a protected class and who were elected prior to the filing of an action pursuant to this chapter shall not preclude a finding of polarized voting that results in an unequal opportunity for a protected class to elect candidates of their choice, or to influence the outcome of an election.

(7) Members of different protected classes may file an action jointly pursuant to this chapter if they demonstrate that their combined voting preferences as a group are different from the rest of the electorate, and they demonstrate that there is polarized voting that results in an unequal opportunity for these protected classes to elect candidates of their choice, or to influence the outcome of an election.

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

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

(10) The plaintiff's constitutional right to the secrecy of the plaintiff's vote is preserved and is not waived by the filing of an action pursuant to this section, and is not subject to discovery.

(11) When considering a request for a preliminary injunction, in any action filed pursuant to section 4 of this act, the court shall grant the requested relief if it determines that, on balance, the hardship imposed upon the defendant by the issuance of relief will be less than the hardship which would be imposed upon the plaintiff if relief were not granted. (5) "Protected class" means a class of voters who are members of a race, color, or language minority group.

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Section 5: CURATIVE MEASURES

A political subdivision that conducts an at-large or district-based method of election pursuant to state, county, or local law, is authorized to change its voting or electoral system to remedy a potential violation of section 4 of this Act. Such remedial measures may include implementing a district-based election system, implementing a different voting method, or some combination of the preceding. If a political subdivision invokes its authority under this section to implement a district-based election system, the districts shall be drawn in a manner consistent with section 6 of this Act.

Section 6: REMEDIES

(1) Upon a finding of a violation of section 4 of this act, the court shall order appropriate remedies that are tailored to remedy the violation, which may include the imposition of a new voting method. The court may direct the affected jurisdiction to draw or redraw district boundaries, or appoint an individual or panel to draw or redraw district lines. The proposed districts must be approved by the court prior to their implementation.

(2) When tailoring a remedy consisting of district-based elections, the court shall implement a district-based election district that is geographically compact. The fact that members of a protected class do not constitute a numerical majority within a proposed district-based election district shall not preclude the implementation of such a district-based election district. If, in tailoring a remedy, the court orders the implementation of a district-based election district where the members of the protected class are not a numerical majority, the court shall do so in a manner that provides the protected class an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election.

(3) In tailoring a remedy after a finding of a violation of section 4 of this act:

- (a) If the next date authorized by state law for conducting elections occurs ninety days or more after the court's ruling, the court shall order new elections, conducted pursuant to the remedy, to be scheduled at the next date authorized by state law for conducting elections.
- (b) If the next election date occurs less than ninety days after the court's ruling, the next election will occur as scheduled and organized.

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(c) All of the positions that were elected pursuant to the at-large or district-based election system that was the subject of the action filed pursuant to this chapter and have at least two years remaining in their terms of office, including those elected pursuant to (b) of this subsection, shall be subject to new elections, pursuant to the remedy implemented under subsection (1) of this section.

(4) State or local laws and ordinances requiring political subdivisions to conduct district-based elections in a primary and at-large elections in the general election do not apply in jurisdictions that implement district-based elections, or adopt voting methods, pursuant to section 5 of this act, or in jurisdictions that are required to implement district-based elections, or adopt voting methods, pursuant to subsection (1) of this section.

Section 7: ATTORNEY'S FEES

(1) In any action to enforce this chapter, the court shall allow the prevailing plaintiff or plaintiffs' reasonable attorney's fees, reasonable expert witness fees, and other costs as are just and proper.

(2) Prevailing defendants shall not recover an award of fees or costs, except as may be authorized by law.

(3) A plaintiff shall be deemed to be a prevailing party for purposes of this section if the political subdivision that is the subject of an action filed pursuant to this chapter adopts or implements an election or voting system after the action is filed that is different from the election or voting system that is the subject of the action filed, and that remedies the violation complained of.

Section 8: VENUE FOR SUIT

Any voter who is a member of a protected class and who resides in a political subdivision where a violation of section 4 of this act is alleged may file an action in the superior court of the county in which the political subdivision is located. If the action is against a county, the action may be filed in the superior court of such county. There is no requirement that an action filed pursuant to this chapter be filed as a class action.

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Section 9: STANDING REQUIREMENTS

Prior to filing an action pursuant to this act, a plaintiff shall first notify the political subdivision that the plaintiff intends to challenge the political subdivision's voting or electoral system under this act. If the political subdivision does not invoke its authority under section 5 of this act within forty-five days after receiving notice, a plaintiff may file an action under this act.

Section 10: JURISDICTIONAL EXEMPTION

The provisions of this act are not applicable to cities and towns with populations under one thousand, or to school districts with K-12 full-time equivalent enrollments of less than two-hundred fifty.

Section 11: SEVERABILITY

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 12: EFFECTIVE DATE

This Act shall go into effect the _____ day of _____ 20____.