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**SENATE BILL 5597**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Saldaña, Hunt, Conway, Das, Dhingra, Frockt, Hasegawa, Kuderer, Liias, Lovelett, Nguyen, Nobles, Pedersen, Stanford, and C. Wilson

AN ACT Relating to the Washington voting rights act; amending RCW 29A.92.020, 29A.92.030, 29A.92.060, 29A.92.090, 29A.92.110, 29A.92.070, 29A.92.080, 29A.92.130, and 29A.92.010; and adding new sections to chapter 29A.92 RCW.

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

**PART I**

**VOTE DILUTION PROHIBITION AND COST RECOVERY MECHANISM**

**Sec.**  RCW 29A.92.020 and 2018 c 113 s 104 are each amended to read as follows:

((~~As~~)) It is a violation of this chapter for a political subdivision to impose a method of electing its governing body that constitutes vote dilution as provided in RCW 29A.92.030((~~, 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 or classes to have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of voters who are members of a protected class or classes~~)).

**Sec.**  RCW 29A.92.030 and 2019 c 64 s 7 are each amended to read as follows:

(1) A political subdivision ((~~is~~)) commits vote dilution and shall be found in violation of this chapter when it is shown that:

(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.

(2) A violation is presumptively established if:

(a) It is shown that the political subdivision used race, ethnicity, or language-minority group status, or another characteristic that serves as a proxy for race, ethnicity, or language-minority group status, for the purpose of apportionment. A political subdivision may only rebut this presumption by showing that race, ethnicity, or language-minority group status, or another characteristic that serves as a proxy for race, ethnicity, or language-minority group status, was used to the extent necessary to comply with this chapter, the federal voting rights act, the state Constitution, or the United States Constitution; or

(b) The electoral district boundaries of the political subdivision "crack" or "pack" minority communities of interest, regardless of intent, and that such "cracking" or "packing" was not necessary to comply with this title, the federal voting rights act, the state Constitution, or the United States Constitution.

(3) No single factor is dispositive or necessary to establish a violation of this section. The equal opportunity to elect shall be assessed pragmatically, based on local election conditions, and may include crossover districts. 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~~)) following factors shall not preclude a finding of a violation under this chapter, but may be ((~~a~~)) factors in determining a remedy:

(a) 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; and

(b) Evidence concerning projected changes in population or demographics. ((~~The equal opportunity to elect shall be assessed pragmatically, based on local election conditions, and may include crossover districts.~~

~~(3)~~)) (4) In determining whether there is polarized voting under this chapter, the court shall analyze elections of the governing body of the political subdivision, ballot measure elections, elections in which at least one candidate is a member of a protected class, and other electoral choices that affect the rights and privileges of members of a protected class. Elections conducted prior to the filing of an action pursuant to this chapter are more probative to establish the existence of ((~~racially~~)) polarized voting than elections conducted after the filing of an action. Evidence concerning elections of the governing body of the political subdivision is more probative than evidence concerning other elections. Statistical evidence is more probative to establish the existence of polarized voting than nonstatistical evidence.

((~~(4)~~)) (5) 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.

((~~(5)~~)) (6) Proof of intent on the part of the voters or elected officials to discriminate against a protected class is not required for a cause of action to be sustained.

((~~(6)~~)) (7) Other factors ((~~such as the~~)) which are probative to establish a violation of this chapter include, but are not limited to:

(a) The extent of the history of official voting discrimination((~~, the use of electoral devices or other~~)) in the political subdivision;

(b) The extent to which the political subdivision has used voting practices or procedures that may enhance the dilutive effects of at large elections((~~, denial~~)) or tend to enhance the opportunity for discrimination against the members of the protected class;

(c) Denial of access to those processes determining which groups of candidates will receive financial or other support in a given election((~~, the~~));

(d) The extent to which members of the protected class contribute to political campaigns at lower rates;

(e) The extent to which members of the protected class vote at lower rates than other members of the electorate;

(f) The extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, ((~~and~~)) health, criminal justice, housing, land use, and environmental protection, which hinder their ability to participate effectively in the political process((~~, and the~~));

(g) The extent to which members of the protected class are otherwise disadvantaged in ways which may hinder their ability to participate in the political process;

(h) The use of overt or subtle racial appeals in political campaigns ((~~are probative, but not necessary factors, to establish a violation of this chapter~~));

(i) A significant lack of responsiveness on the part of elected officials to the particularized needs of the protected class; and

(j) Whether the political subdivision lacks a compelling policy justification for adopting or maintaining the method of election narrowly tailored to the political subdivision's interests or whether a less biased law would not significantly impair the compelling policy justification.

(8) Evidence of the factors listed in subsection (7) of this section concerning the state, private actors, or other political subdivisions in the geographic region may be considered but is less probative than evidence concerning the political subdivision itself.

(9) The use of partisanship or characteristics associated with partisanship cannot be used as a defense to a claim under this chapter.

(10) Evidence of the following is not probative in terms of establishing a defense to a claim under this chapter:

(a) The size of the burden on members of the protected class;

(b) That the political jurisdiction's voting rules were adopted prior to this chapter's enactment or the level of deviation from standard practice when this chapter was enacted;

(c) The size of any disparities in a rule's impact on members of different racial or ethnic groups;

(d) Additional avenues available to the protected class to vote; and

(e) That the voting rules are facially neutral in time, place, or manner.

(11) A class of citizens protected by this subsection may include a cohesive coalition of members of different racial, ethnic, or language minority groups.

**Sec.**  RCW 29A.92.060 and 2019 c 64 s 9 are each amended to read as follows:

(1) A voter who resides in the political subdivision or an organization whose membership includes or is likely to include a voter in the jurisdiction and 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.

**Sec.**  RCW 29A.92.090 and 2019 c 64 s 12 are each amended to read as follows:

(1) After exhaustion of the time period in RCW 29A.92.080, any voter who resides in a political subdivision or organization whose membership includes or is likely to include a voter in the jurisdiction and who resides in the political subdivision where a violation of RCW 29A.92.020 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, or in the superior court of either of the two nearest judicial districts as determined pursuant to RCW 36.01.050(2). An action filed pursuant to this chapter does not need to be filed as a class action.

(2) ((~~Members~~)) A cohesive coalition of members of different protected classes may file an action jointly pursuant to this chapter ((~~if they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate~~)).

**Sec.**  RCW 29A.92.110 and 2019 c 454 s 2 are each amended to read as follows:

(1) The court may order appropriate remedies including, but not limited to, the imposition of a district-based election system. The court may order 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. The court may not approve a remedy that has a dilutive effect on the protected class.

(2) Implementation of a district-based remedy is not precluded by the fact that members of a protected class do not constitute a numerical majority within a proposed 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. The court may also approve a district-based election system that provides the protected class the opportunity to join in a coalition of two or more protected classes to elect candidates of their choice if there is demonstrated political cohesion among the protected classes.

(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.

(4) Within thirty days of the conclusion of any action filed under RCW 29A.92.100, the political subdivision must publish on the subdivision's website, the outcome and summary of the action, as well as the legal costs incurred by the subdivision. If the political subdivision does not have its own website, then it may publish on the county website.

**Sec.**  RCW 29A.92.070 and 2019 c 64 s 10 are each amended to read as follows:

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

(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.

(3) If the court concludes that the political subdivision's remedy complies with RCW 29A.92.020, an action under this chapter may not be brought against that political subdivision for four years by any party so long as the political subdivision does not enact a change to or deviation from the remedy during this four-year period that would otherwise give rise to an action under this chapter.

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

(5)(a) If the court issues an order under subsection (2) of this section, the person or organization who sent the notice may make a demand to the political subdivision for reimbursement of the costs incurred in conducting the research necessary to send the notice. A demand made under this subsection must:

(i) Be in writing;

(ii) Be received by the political subdivision within 30 days of the adoption of the new electoral system; and

(iii) Include financial documentation, such as a detailed invoice for demographic services, that support the demand. The political subdivision may request additional documentation if the documentation provided is insufficient for the political subdivision to corroborate the claimed costs.

(b) The political subdivision shall, within 60 days of receiving the demand, reimburse the reasonable costs of the person or organization who sent the notice, not to exceed $50,000.

**Sec.**  RCW 29A.92.080 and 2019 c 64 s 11 are each amended to read as follows:

(1) Any voter who resides in the political subdivision or organization whose membership includes or is likely to include a voter in the jurisdiction and who resides in the political subdivision may file an action under this chapter if, ((~~one hundred eighty~~)) 50 days after a political subdivision receives notice of a challenge to its electoral system under RCW 29A.92.060, the political subdivision has not obtained a court order stating that it has adopted a remedy in compliance with RCW 29A.92.020. ((~~However, if notice is received after July 1, 2021, then the political subdivision shall have ninety days to obtain a court order before an action may be filed.~~))

(2) If a political subdivision has received two or more notices containing materially different proposed remedies, the political subdivision shall work in good faith with the persons to implement a remedy that provides the protected class or classes identified in the notices an equal opportunity to elect candidates of their choice. If the political subdivision adopts one of the remedies offered, or a different remedy that takes multiple notices into account, the political subdivision shall seek a court order acknowledging that the political subdivision's remedy is reasonably necessary to avoid a violation of RCW 29A.92.020. The persons or organizations 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.

(3) If the court concludes that the political subdivision's remedy complies with RCW 29A.92.020, an action under this chapter may not be brought against that political subdivision for four years by any party so long as the political subdivision does not enact a change to or deviation from the remedy during this four-year period that would otherwise give rise to an action under this chapter.

(4)(a) If the court issues an order under subsection (2) of this section, the persons or organizations who sent notices may make a demand to the political subdivision for reimbursement of the costs incurred in conducting the research necessary to send the notices. A demand made under this subsection must:

(i) Be in writing;

(ii) Be received by the political subdivision within 30 days of the adoption of the new electoral system; and

(iii) Include financial documentation, such as a detailed invoice for demographic services, that support the demand. The political subdivision may request additional documentation if the documentation provided is insufficient for the political subdivision to corroborate the claimed costs.

(b) The political subdivision shall, within 60 days of receiving the demand, reimburse the reasonable costs of the persons or organizations who sent the notices, not to exceed $50,000.

**Sec.**  RCW 29A.92.130 and 2018 c 113 s 405 are each amended to read as follows:

(1) In any action to enforce this chapter, the court may allow the prevailing plaintiff or plaintiffs, other than the state or political subdivision thereof, reasonable attorneys' fees, all nonattorney fee costs as defined by RCW 4.84.010, and all reasonable expert witness fees. ((~~No~~)) Except as provided in RCW 29A.92.070(5) and 29A.92.080(4), no fees or costs may be awarded if no action is filed.

(2)(a) A prevailing plaintiff does not need to achieve relief or favorable judgment if the plaintiff demonstrates that they succeeded in altering the political subdivision's behavior to correct a claimed harm at the time the suit for interim attorneys' fees is filed.

(b) For purposes of this section, "altering the political subdivision's behavior" includes, but is not limited to, adopting a new method of electing a governing body, modifying district boundaries, or amending a voting rule or qualification.

(3) Prevailing defendants may recover an award of fees or costs pursuant to RCW 4.84.185.

**PART II**

**PRECLEARANCE**

NEW SECTION. **Sec.**  A new section is added to chapter 29A.92 RCW to read as follows:

(1) For purposes of this section:

(a) "Covered jurisdiction" means:

(i) A political subdivision that is determined pursuant to subsection (7) of this section to contain at least one racial, ethnic, or language minority group which constitutes at least 10 percent of the subdivision's voting age population;

(ii) A political subdivision which, within the previous 25 years, has become subject to a court order or government enforcement action based upon a finding of any violation of this chapter, the federal voting rights act, the Fifteenth Amendment to the United States Constitution, or a voting-related violation of the Fourteenth Amendment to the United States Constitution;

(iii) A political subdivision which, within the previous five years, has failed to comply with its obligations to provide data or information to the statewide database, as stated in section 10 of this act; or

(iv) A political subdivision which, within the previous 25 years, has become subject to at least three court orders or government enforcement actions based upon a finding of any violation of state or federal civil rights law or the Fourteenth Amendment to the United States Constitution concerning discrimination against members of a protected class.

(b) "Covered practice" means:

(i) Any change to the method of election of members of a governing body by adding seats elected at-large or by converting one or more seats elected from a single-member district to one or more at-large seats or seats from a multimember district;

(ii) Any change, or series of changes within a 12-month period, to the boundaries of the covered jurisdiction that reduces by more than five percentage points the proportion of the jurisdiction's voting age population that is composed of members of a single racial or language-minority group, as determined by the most recent American community survey data;

(iii) Any change to the boundaries of election districts or wards in the covered jurisdiction or to the boundary lines of the covered jurisdiction;

(iv) Any change that restricts the ability of any person to provide interpreter services to voters in any language other than English or which limits or impairs the creation or distribution of voting materials in any language other than English;

(v) Any change that reduces the number of or consolidates or relocates voting centers or ballot drop boxes in the covered jurisdiction or on an Indian reservation where a single language-minority group represents 20 percent or more of the voting age population, except where permitted by law in the event of an emergency; or

(vi) Any change to the covered jurisdiction's plan of government, including a change to or in the framing of a jurisdiction's charter.

(2)(a) Prior to enacting or seeking to administer any voting qualification or prerequisite to voting, or any standard, practice, or procedure with respect to voting, that is a covered practice, the governing body of a covered jurisdiction shall either:

(i) Institute an action in superior court for a declaratory judgment; or

(ii) Submit such covered practice to the attorney general for issuance of a certification that no objection exists to the enactment or administration by the covered jurisdiction of the covered practice.

(b) The superior court shall issue the declaratory judgment or, if applicable, the attorney general shall issue a certification of no objection, only if the covered practice:

(i) Does not have the purpose or the effect of denying or abridging the right to vote on account of race, color, or membership in a language-minority group; and

(ii) Will not result in the retrogression in the position of persons based on race, color, or membership in a language-minority group with respect to their effective exercise of the electoral franchise.

(c) The attorney general, or any person whose opportunity to vote is affected by a covered practice that has been enacted or administered by a covered jurisdiction, may institute an action in superior court to compel the governing body of the jurisdiction to institute an action for a declaratory judgment or to seek issuance of a certification of no objection pursuant to this subsection.

(3)(a) No qualification, prerequisite, standard, practice, or procedure that is a covered practice is effective until the superior court has entered a declaratory judgment or the attorney general has issued a certification of no objection.

(b) A certification of no objection is deemed to have been issued if:

(i) The attorney general does not issue an objection within:

(A) Thirty days of submission of any covered policy concerning designation of a site as a voting center or removal of a ballot drop box; or

(B) Within 60 days of the governing body's submission of any other covered policy; or

(ii) The attorney general affirmatively indicates that no such objection will be made, upon a showing of good cause to facilitate an expedited approval within 60 days of the governing body's submission.

(c) An affirmative indication by the attorney general that no objection will be made, the attorney general's failure to object, or a declaratory judgment entered by the superior court pursuant to this section does not bar a subsequent action to enjoin enforcement of any qualification, prerequisite, standard, practice, or procedure.

(d) If the attorney general affirmatively indicates that no objection will be made within the 60-day period following the receipt of the governing body's submission, the attorney general may reserve the right to reexamine the submission if additional information that would otherwise require objection in accordance with this section comes to his or her attention during the remainder of the 60-day period.

(e) For any covered policy concerning the establishment of a district-based election system, apportionment plans, or a change to the form of government of a political subdivision, the attorney general may invoke up to two extensions of 90 days each.

(4) If the attorney general objects to a covered practice submitted by a covered jurisdiction, the governing body of such jurisdiction may file an appeal to the objection in superior court.

(5) If the attorney general issues a certification of no objection to a covered practice submitted by a covered jurisdiction, any person whose opportunity to vote is affected by the covered practice may file an action in superior court to appeal the attorney general's issuance of a certification of no objection.

(6) In any action filed pursuant to this subsection, the superior court shall enjoin the enactment or administration of the covered practice that is the subject of the action unless it determines that the covered practice neither has the purpose or effect of denying or abridging the right to vote on account of race or color or membership in a language-minority group nor will it result in the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise.

(7) As early as practicable each calendar year, the secretary of state shall, in consultation with the attorney general, the office of financial management, and other relevant agencies, notify those counties, cities, and towns that contain at least one racial, ethnic, or language-minority group which constitutes at least 10 percent of the subdivision's voting age population, based on the most recent American community survey data. The attorney general shall publish the list of these counties, cities, and towns on a website established and maintained for this purpose. A determination made pursuant to this subsection is effective upon publication.

**PART III**

**DATA COLLECTION AND REQUIRED REPORTING**

NEW SECTION. **Sec.**  A new section is added to chapter 29A.92 RCW to read as follows:

(1) There shall be established within the University of Washington a repository of the data necessary to assist the state and all political subdivisions with evaluating whether and to what extent existing laws and practices with respect to voting and elections are consistent with the public policy expressed in this title, implementing best practices in voting and elections to achieve the purposes of this title, and to investigate potential infringements upon the right to vote. This repository shall be referred to as the "statewide database" in this section.

(2) The operation of the statewide database shall be the responsibility of the director of the statewide database, hereinafter referred to in this title as the "director," who shall be a member of the faculty of the University of Washington with doctoral level expertise in demography, statistical analysis, and electoral systems. The director shall be appointed by the governor.

(3) The director shall appoint such staff as are necessary to implement and maintain the statewide database.

(4) The statewide database shall maintain in electronic format at least the following data and records for at least the previous 12-year period:

(a) Estimates of the total population, voting age population, and citizen voting age population by race, ethnicity, and language-minority groups, broken down to the election district level on a year-by-year basis for every political subdivision in the state, based on data from the United States census bureau, American community survey, or data of comparable quality collected by a public office;

(b) Election results at the precinct level for every statewide election and every election in every political subdivision;

(c) Regularly updated voter registration lists, voter history files, voting center locations, ballot drop box locations, and student engagement hub locations for every election in every political subdivision;

(d) Contemporaneous maps, descriptions of boundaries, and shapefiles for election districts;

(e) Ballot rejection lists, curing lists, and reasoning for ballot rejection for every election in every political subdivision;

(f) Apportionment plans for every election in every political subdivision; and

(g) Any other data that the director deems advisable to maintain in furtherance of the purposes of this title.

(5) The director shall update the data in the database no later than seven days after certification of each election by the secretary of state.

(6) Except for any data, information, or estimates that identifies individual voters, the data, information, and estimates maintained by the statewide database shall be posted online and made available to the public at no cost.

(7) The statewide database shall prepare any estimates made pursuant to this section by applying the most advanced, peer-reviewed, and validated methodologies.

(8) On or before January 1, 2023, and every third year thereafter, the statewide database shall publish on its website and transmit to the state board of elections for dissemination to county auditors and for the office of the superintendent of public instruction a list of political subdivisions required pursuant to this section to provide assistance to members of language-minority groups and each language in which those political subdivisions are required to provide assistance. Each county auditor shall transmit the list described herein to all political subdivisions within their jurisdiction.

(9) Upon the certification of election results and the completion of the voter history file after each election, the secretary of state shall transmit copies of:

(a) Election results at the election district level;

(b) Contemporaneous voter registration lists;

(c) Voter history files;

(d) Maps, descriptions, and shapefiles for election districts; and

(e) Lists of election day poll site and early voting sites and lists, shapefiles, or descriptions of the election districts assigned to each election day poll site or early voting site.

(10) Staff at the statewide database may provide nonpartisan technical assistance to political subdivisions, scholars, and the general public seeking to use the resources of the statewide database.

(11) The data, information, and estimates maintained by the statewide database shall be granted a rebuttable presumption of validity by any court concerning any claim brought pursuant to this title.

**PART IV**

**GENERAL PROVISIONS**

**Sec.**  RCW 29A.92.010 and 2018 c 113 s 103 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. In applying these definitions and other terms in this chapter, courts may rely on relevant federal case law for guidance to the extent such case law does not violate the spirit, intent, and elements of this chapter.

(1) "At large 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 or one that combines at large with district-based elections.

(2) "Cracking" and "packing" both refer to specific ways of drawing district boundaries.

(a) "Cracking" means the drawing of districts in a manner that divides the concentration of minority communities of interest voters across several districts such that they constitute minority in each.

(b) "Packing" means the practice of drawing political subdivision boundaries in a manner that ensures a particular candidate wins or that majority communities of interest retain a strong majority.

(3) "Crossover district" means a district where a protected class is a minority of the population but potentially large enough to elect candidates of choice with help from voters who are not members of the protected class who cross over to support a protected class's candidate of choice.

(4) "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)~~)) (5) "Federal voting rights act" means the federal voting rights act of 1965, 52 U.S.C. 10301 et seq.

(6) "Polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal voting rights act((~~, 52 U.S.C. 10301 et seq.,~~)) 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.

((~~(4)~~)) (7) "Political subdivision" means any county, city, town, school district, fire protection district, port district, or public utility district, but does not include the state.

((~~(5)~~)) (8) "Protected class" means a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal voting rights act((~~, 52 U.S.C. 10301 et seq~~)).

(9) "Vote dilution" means a method of election, including at-large or district-based, that impairs the ability of members of a protected class to equally affect the composition of a legislative body by electing candidates of their choice or otherwise influencing the outcomes of election unless necessary to serve a compelling state interest.

**--- END ---**