American Indian Civil (and Political) Rights in the Twentieth Century


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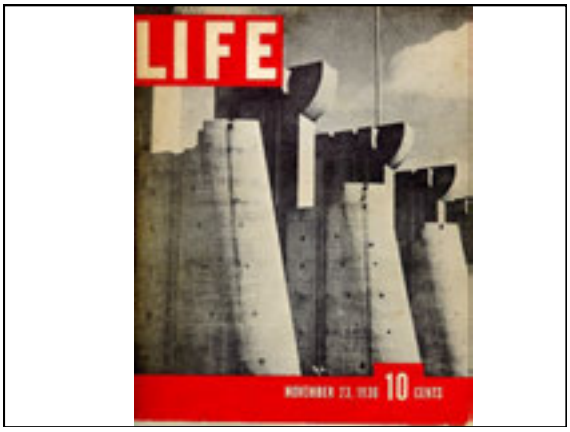
LIFE
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Indian prohibition was repealed country-wide in 1953 by President Dwight D. Eisenhower. Indian reservations, however, many remained dry unless they opted to permit the possession and sale of alcohol on the reservation.

Native Americans and the Civil Rights Movement

- In the late 1960s
  - least prosperous,
  - least healthy
  - least stable minority group in American society
- government policy = a return to the assimilation goals of the Dawes Severalty Act of 1887 (i. e. Termination, Relocation)

"Back to the Bad Ol' Days"

- "Termination" and Relocation
- Federal Indian Policy in the 1940s and 1950s
- Circular Number 3537 – November 15, 1943
  - John Collier, commissioner 1933 - 1945
  - Called for basic programs on all reservations
  - And creation of a 10 year development program for each reservation
  - Collier replaced by Brophy, to continue *"economic and social rehabilitation of the Indian …"*

Zimmerman Report …

- February 8, 1947
- Assistant Commissioner Wm. Zimmerman before the Senate Committee on the Post Office and Civil Service to present testimony on Indian Bureau withdrawal.
  - "to wean the Indian away from his special status …"

- Senator (Olin) Johnson: *What conditions did you use as a measure, so the committee may have the benefit of that?*
- Mr. Zimmerman: *The first one was the degree of acculturation; the second, economic recourses and condition of the tribe; third, the willingness of the tribe to be relieved of federal control and the fourth, the willingness of the State to take over.*

Tests applied to each case …

Three Groups

Group 1: Those tribes that could be released now (1947) from federal supervision;

Group 2: Those that could be released in 10 years;

Group 3: Those that could be released in an indefinite time.

Group One – "Release now …"

Flathead	Hoopa	Klamath
Menominee	Mission	New York
Osage	Potawtomi	Sacramento
Turtle Mountain (Conditionally)		

Group Two – "Release in 10 years"

Blackfeet	Cherokee	Cheyenne River
Colville (subject to restoration of ceded land)	Consolidated Chippewa	Crow (special legislation)
Fort Belknap	Fort Peck (irrigation and power)	Fort Totten (no resources)
Grand Ronde (no resources)	Great Lakes (no resources)	Northern Idaho
Quapaw (in part, Wyandotte, Seneca)	Taholah, Tulalip (consolidation in part)	Tomah
Umatilla	Warm Springs	Wind River (Shoshone only)
Winnebago (Omaha still predominately full-blood)		

Group Three – "indefinite time"

Cheyenne and Arapaho	Chocataw	Colorado River	Consolidated Ute
Crow Creek	Five Tribes	Fort Apache	Fort Berthold
Fort Hall	Hopi	Jicarilla	Kiowa
Mescalero	Navajo	Pawnee	Pima
Pine Ridge	Quapaw	Red Lake	Rocky Boy's
Rosebud	San Carlos	Sells	Seminole
Shawnee	Sisseton	Standing Rock	Taholah, Tulalip
Tongue River	Truzton Canon	Tinah and Ouray	United Pueblos
Western Shoshone	Wind River (Arapaho only)	Yakima	

House Concurrent Resolution 108

Whereas it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens:

Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring),

That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians:

The Flathead Tribe of Montana, the Klamath Tribe of Oregon, the Menominee Tribe of Wisconsin, the Potowatamie Tribe of Kansas and Nebraska, and those members of the Chippewa Tribe who are on the Turtle Mountain Reservation, North Dakota.

It is further declared to be the sense of Congress that, upon the release of such tribes and individual members thereof from such disabilities and limitations, all offices of the Bureau of Indian Affairs in the States of California, Florida, New York, and Texas and all other offices of the Bureau of Indian Affairs whose primary purpose was to serve any Indian tribe or individual Indian freed from Federal supervision should be abolished.

It is further declared to be the sense of Congress that the Secretary of the Interior should examine all existing legislation dealing with such Indians, and treaties between the Government of the United States and each such tribe, and report to Congress at the earliest practicable date, but not later than January 1, 1954, his recommendations for such legislation as, in his judgment, may be necessary to accomplish the purposes of this resolution.

Passed August 1, 1953.

Tribes freed …

From 1953-1964, 109 tribes were terminated and federal responsibility and jurisdiction was turned over to state governments.

Approximately 2,500,000 acres of trust land was removed from protected status and 12,000 Native Americans lost tribal affiliation.

The lands were sold to non-Indians and the tribes lost official recognition by the U.S. government.

Public Law 280

Passed in 1953, Public Law 280 (PL 280) gave jurisdiction over criminal offenses involving Indians in Indian Country to certain States and allowed other States to assume jurisdiction.

Enumerated in Public Law 280 were six states which were obligated to assume jurisdiction from the outset of the law: Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin. States that have assumed at least some jurisdiction since the enactment of Public Law 280 include: Nevada, South Dakota, Washington, Florida, Idaho, Montana, North Dakota, Arizona, Iowa, and Utah.

Burning Down Tipis

It is important to note that in our Indian language, the only translation for termination is to "wipe out" or "kill off." You have caused us to jump every time we hear this word …

Earl Old Person
Chief
Former Tribal Chairperson
Blackfeet Tribe
Montana

How can we plan our future when the Indian Bureau threatens to wipe us out as a race? ***It is like trying to cook a meal in your tipi when someone is standing outside trying to burn the tipi down.***

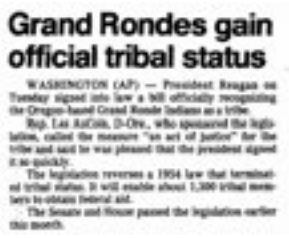
Earl Old Person

Dillon S. Myer, the Original Terminator

In 1970, President Richard Nixon asked Congress to pass a resolution repudiating termination. He told Congress:

> "Because termination is morally and legally unacceptable, because it produces bad practical results, and because the mere threat of termination tends to discourage greater self-sufficiency among Indian groups, I am asking the Congress to pass a new Concurrent Resolution which would expressly renounce, repudiate and repeal the termination policy as expressed in House Concurrent Resolution 108 of the 83rd Congress."

Since the end of termination, 78 of the 113 terminated tribes have been recognized again by the United States government and 35 now have casinos; 24 of these tribes are now considered extinct; 10 have state recognition but not federal recognition; and 31 are landless.



Grand Rondes gain official tribal status

WASHINGTON (AP) — President Reagan on Tuesday signed into law a bill officially recognizing the Oregon-based Grand Ronde Indians as a tribe.

Rep. Les AuCoin, D-Ore., who sponsored the legislation, called the measure "an act of justice" for the tribe and said he was pleased that the president signed it so quickly.

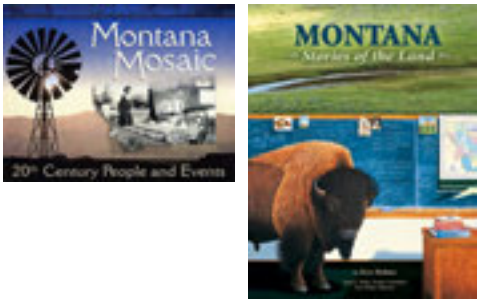
The legislation reverses a 1954 law that terminated tribal status. It will enable about 1,300 tribal members to obtain federal aid.

The Senate and House passed the legislation earlier this month.

Indian Relocation Act of 1956

The Indian Relocation Act of 1956 (also known as Public Law 959 or the Adult Vocational Training Program) was a United States law intended to encourage Native Americans in the United States to leave Indian reservations, acquire vocational skills, and assimilate into the general population. Part of the Indian termination policy of that era, it played a significant role in increasing the population of urban Indians in succeeding decades.


Real Indians Soon to Call City Home



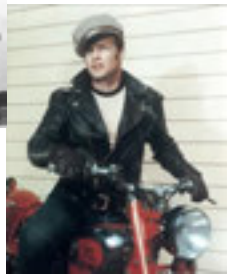
Getting from here to there …

Native Americans Fight for Fairness

- President Johnson established the National Council on Indian Opportunity to get Native Americans more involved in setting policy regarding Indian affairs.
- Real change, however, came from the efforts of Native American political activists.
- During the period of Red Power activism, Native Americans made important legislative gains.

  Congress passed laws that enhanced education, health care, voting rights, and religious freedom for Native Americans.

"Rebel with a Cause"



Sacheen Littlefeather

on behalf of Marlon Brando: "Academy Award for Best Actor" 1973

"The motion picture community has been as responsible as any," Brando wrote, "for degrading the Indian and making a mockery of his character, describing his as savage, hostile and evil."


Alcatraz: Taking Back "The Rock"


INDIANS
WELCOME
INDIAN
PROPERTY
INDIAN LAND

Native Americans Fight for Fairness

Occupation of Alcatraz

- A group of Native Americans tried to reclaim Alcatraz Island.
- Claimed that the Treaty of Fort Laramie gave them the right to use any surplus federal territory
- The occupation lasted for 18 months, until federal marshals removed the group by force.
- This incident drew public attention to the plight of Native Americans.
- Partly as a result, New Mexico returned 48,000 acres of land to the Taos Pueblo in 1970.

AIM

- The **American Indian Movement** was founded in Minnesota in 1968
- Became the major force behind the Red Power movement
- Called for a renewal of traditional cultures, economic independence, and better education for Indian children
- **Russell Means**—one of AIM's best-best known leaders
- AIM sometimes used forceful tactics
  - the Trail of Broken Treaties
  - Occupation of Wounded Knee

Accessing the Progress of the Fight for Fairness

Congress passed a number of laws in the 1970s to enhance education, health care, voting rights, and religious freedom for Native Americans.

The Red Power movement instilled greater pride in Native Americans and generated wider appreciation of Native American culture.

Despite these accomplishments, Native Americans continued to face many problems.

Unemployment remained high and the high school dropout rate among Native Americans was the highest in the nation.

Indian Education: "A National Tragedy, A National Challenge"

1969 Report of the Committee on Labor and Public Welfare, United States Senate made by its Special Subcommittee on Indian Education pursuant to S. Res. 80

Civil Rights under State and Federal Law

Indian people have frequently been subjected to denial of their civil rights by federal and state government officials. These cases often involve off-reservation activities where the Indians have tried to exercise cultural, religious, and treaty rights that collide with state and federal laws which make no allowance for such practices.

The American Indian Religious Freedom Act

(commonly abbreviated to AIRFA) is a federal law and a joint resolution of Congress passed in 1978. It was created to protect and preserve the traditional religious rights and cultural practices of American Indians, Eskimos, Aleuts, and Native Hawaiians.

These rights include, but are not limited to, access of sacred sites, freedom to worship through ceremonial and traditional rights and use and possession of objects considered sacred. The Act required policies of all governmental agencies to eliminate interference with the free exercise of Native religion, based on the First Amendment, and to accommodate access to and use of religious sites to the extent that the use is practicable and is not inconsistent with an agency's essential functions.

American Indian Religious Freedom Act (1978)

- It is the policy of the United States to protect and preserve freedom to exercise traditional religions.
- Mainly toothless and gives tribes no right to obtain judicial remedy for any federal action.
- See *Lyng v. (1988)* and *Employment Division v. Smith (1990)*!

Sacred Lands and Religious Practice

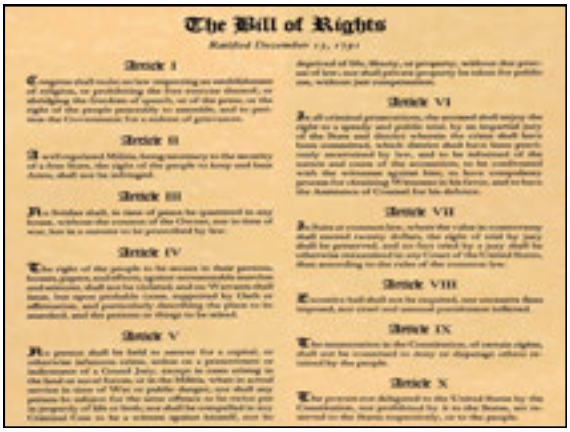
- 1988 – Lyng v. Northwest Indian Cemetery Protective Association
  - Allowed National Forest Service to build a road through sacred lands, even when it was established that to so do would destroy the ability of the Indians to conduct their religion.

Employment Division v. Smith

- ***Employment Division, Department of Human Resources of Oregon v. Smith***, 494 U.S. 872 (1990)
- Alfred Smith, Native, drug counselor for the state of Oregon, was fired for taking peyote during a Native American Church ceremony.
- "The Free Exercise Clause permits the State to prohibit sacramental peyote use and thus to deny unemployment benefits to persons discharged for such use." Neutral laws of general applicability do not violate the Free Exercise Clause of the First Amendment. Not a ban on religious exercise, but on the possession of an illegal substance.

Civil Rights on the Reservation

- Tribal Sovereignty: In 1896, the United States Supreme Court held in *Talton v. Mayes* that the Bill of Rights does not apply to tribal governments since it only restrains the actions of federal and state governments.
- During the 1960s, tribal members began to express concerns over the conduct of tribal governments.
- The United States Senate began hearings on such allegations and were shocked to learn the limits to the Bill of Rights.


The Bill of Rights

Ratified December 15, 1791

Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Indian Civil Rights Act

- In 1886, in United States v. Kagama, it was established that Congress has authority to govern the internal affairs of Indian tribes and impose laws directly upon Indians (Major Crimes Act).
- So, in 1968, Congress enacted the Indian Civil Rights Act, protecting the rights of all persons against acts of tribal governments.

§ 1301. *Definitions*

For purposes of this subchapter, the term -

1. ''Indian tribe'' means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
2. ''powers of self-government'' means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
3. ''Indian court'' means any Indian tribal court or court of Indian offense.

§ 1302. *Constitutional rights*

No Indian tribe in exercising powers of self-government shall –

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
2. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
3. subject any person for the same offense to be twice put in jeopardy;
4. compel any person in any criminal case to be a witness against himself;

5. take any private property for a public use without just compensation;
6. deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
7. require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and [1] a fine of $5,000, or both;
8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
9. pass any bill of attainder or ex post facto law [w/out benefit of trial];
10. or deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

§ 1303. *Habeas corpus*

- The Act contains no reference to enforcement; only one remedy is specified: the writ of habeas corpus *"[(We command) that you have the body"];* no other enforcement mechanism was mentioned.
- *The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.*

Question of Jurisdiction

- From 1968 to 1978, lawsuits against tribes under the 1968 Indian Civil Rights Act gave the federal courts jurisdiction and thus overrode tribal sovereign immunity.
- The question of jurisdiction of federal courts over suits against tribes seemed settled and unchallengeable until 1978.

Santa Clara Pueblo v. Martinez

- ***Santa Clara Pueblo v. Martinez,*** 436 U.S. 49 (1978), a landmark case regarding the federal government's jurisdiction over Indian tribes, arose from tribal disputes over membership.
- A woman member of the Santa Clara Pueblo tribe married a Navajo and had seven children. The Santa Clara Pueblo denied membership to the woman's children based on a tribal ordinance excluding the children of female, but not male, members who married outside the tribe.
- The mother asked the federal district court to enjoin enforcement of this gendered ordinance.

Decision

- The district court decided in favor of the mother, contending that the Indian Civil Rights Act granted it implied jurisdiction to do so. [Congress passed the act in 1968 to apply certain provisions of the Bill of Rights in the U.S. Constitution to tribal governments in criminal cases.]
- Santa Clara Pueblo appealed the federal court's decision, arguing that the 1968 law did not authorize civil actions in federal court for relief against a tribe or its officials.
- The Supreme Court agreed, guaranteeing strong tribal autonomy except when Congress provided for federal judicial review.

Good news or bad?

- In *The Indian Civil Rights Act at Forty* (Kristin Carpenter, et all, UCLA, 2012), scholar Catharine A. MacKinnon states that the case "won an advance in Native sovereignty on the backs of Native women" p. 28).
- Eva Petoskey (Grand Traverse Band of Ottawa and Chippewa Indians), opines "the only time the Supreme Court has upheld sovereignty was at the expense of an Indian woman, and I say, I would pay that cost" (p. 49).

Step One: The Path to Citizenship

Deemed not to be citizens, Indians had no federally protected right to vote for many years. In 1884 the Supreme Court declared that Indians "are not citizens," and, in the absence of being naturalized, were not entitled to vote.

Indian Citizenship

- Indian Citizenship Act of 1924.
- Said to be a reward for Indian participation in WWI.
- Designed to speed Indian assimilation into American Society.

President Calvin Coolidge with four Osage Indians after Coolidge signed the bill granting Indians full citizenship.

Citizenship Defiance

Despite passage of the Citizenship Act of 1924, South Dakota continued to deny Indians the right to vote and hold office until the 1940s. Even after the repeal of a state law denying the right to vote, the state—as late as 1975—prohibited Indians from voting in elections in counties that were "unorganized" under state law. The three unorganized counties were Todd, Shannon, and Washabaugh, whose residents were overwhelmingly Indian. The state also prohibited residents of these counties from holding county office until as recently as 1980.

Five other states (Idaho, Maine, Mississippi, New Mexico, and Washington) prohibited "Indians not taxed" from voting, although the states imposed no similar disqualification of non-taxpaying whites. Arizona denied Indians living on reservations the right to vote because they were "under guardianship" of the federal government and thus disqualified from voting by the state constitution. The practice continued until 1948, when the state supreme court ruled that the language in the state constitution referred to a judicially established guardianship and had no application to the status of Indians as a class under federal law. Utah denied Indians living on reservations the right to vote because they were non-residents under state law. The state supreme court upheld the law, but the legislature repealed it in 1957, after the Supreme Court, at the request of the state attorney general, agreed to review the case.

Montana also disfranchised Indians after the Citizenship Act by amending its constitution in 1932 to require that a person, in order to vote, not only be a "citizen" but also a taxpayer—unless, that is, a person had the right to vote at the time the state constitution was first adopted. The state enacted a statute in 1937 requiring all deputy voter registrars to be "qualified, taxpaying" residents of their precincts. Since Indians living on reservations were exempt from some local taxes, the requirement excluded almost all Indians from serving as deputy registrars and denied them access to voter registration in their own precincts. This provision remained in effect until its repeal in 1975. Another statute enacted in 1937 cancelled the registration of all electors and required re-registration. Indian voter registration remained depressed after the purge until the 1980s. In Colorado, Indians residing on reservations were not allowed to vote until 1970.

Montana Indian Voting Rights

- **Windy Boy v. County of Big Horn, 647 F. Supp. 1002 - Dist. Court, D. Montana, Billings Div. 1986**

647 F.Supp. 1002 (1986)

Janine WINDY BOY, Gary Howey, Norma Bixby, Carlena Old Elk, Dale Old Horn, James Ruegamer Mark Small, Clo Small, Plaintiffs,
v.
COUNTY OF BIG HORN, Dick Gregory, John Lind, John Koebbe, Donald Beery, Lambert Vanderstoot, Harvey Pitsch, Michael Downing, James Herbst, Roberta Snively, Rod Sves, Defendants.

No. CV 83-225-BLG-ER.

United States District Court, D. Montana, Billings Division.

June 13, 1986

1004 Jeffrey Renz, Billings, Mont., Laughlin MacDonald, Atlanta, Ga., for plaintiffs.

John W. Ross, Michael P. Heringer, Anderson, Brown, Gorbatas, Cebull & Jones, P.C., Billings, Mont., for defendants.

MEMORANDUM OPINION

RAFEEDIE, District Judge, Sitting by Designation.

I. INTRODUCTION

Plaintiffs are American Indians and others who challenge the at-large system of voting for Board of Commissioners and school board in Big Horn County, Montana. Their claims arise under Section 2 et seq. of the Voting Rights Act, 42 U.S.C. § 1973 et seq., the Fourteenth and Fifteenth Amendments to the Constitution, and 42 U.S.C. § 1983. Plaintiffs claim at-large voting denies them the equal opportunity to participate in the political process and to elect representatives of their choice.

Big Horn County, Montana is 5,023 square miles, larger than the State of Connecticut. According to the 1980 census, 11,096 people live in the county. Fifty-two and one-tenth (52.1) percent are white, 46.0 percent are American Indian, and 1.7 percent are of other races. There are 7,308 residents of voting age of whom 50 percent are white and 47 percent are Indian and current registration figures reflect a similar breakdown among registered voters.

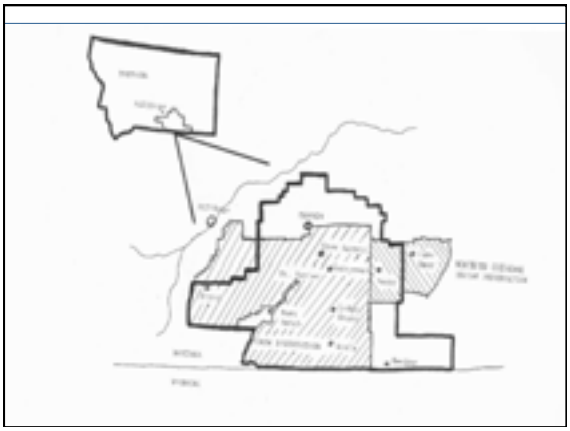
Fourteenth Amendment to the United States Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fifteenth Amendment to the United States Constitution

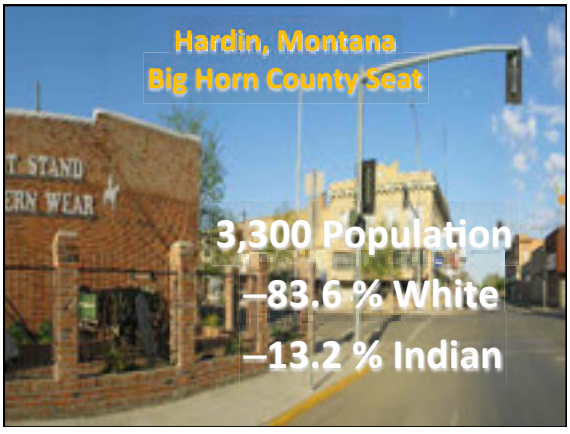
- AMENDMENT XV *Passed by Congress February 26, 1869. Ratified February 3, 1870.*
- **Section 1.**
  The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude-
- **Section 2.**
  The Congress shall have the power to enforce this article by appropriate legislation.

Big Horn County, Montana



Score Card
Big Horn County Profile

- 5,023 Square Miles (larger than Connecticut)
- 11,096 Residents
  - 52.1 % white
  - 46.2 % Indian (Crow and Cheyenne)
  - 1.7 % Other



Governing Body

- Three member Board of Commissioners
  (one representing each of three districts)
  - Elected at large
  - Serve staggered 6 year terms
  - One commissioner elected in even # years
  - Elections partisan w/ June primaries
  - **NO INDIAN HAD EVER BEEN ELECTED TO THE BOARD OF COMMISSIONERS.**

School Boards

- School District 17 (Elementary) and District 1 (High School)
- Both include Hardin
- Each with 5 member Board of Trustees
  - Only one Indian had ever been elected (District 1)

*** Plaintiffs thus challenges the at-large system of voting for Board of Commissioners and school boards.**

At-Large Elections and the Voting Rights Act

"At-large voting schemes … tend to minimize the voting strength of minority groups by permitting the political majority to elect all representatives of the district. A distinct minority, whether it be a racial, ethnic, economic, or political group, may be unable to elect any representatives in an at-large election, yet may be able to … if the political unit is divided into single member districts."

At-large Elections are neither per se unconstitutional nor per se a violation of the Voting Rights Act

Only when at-large elections dilute minority votes so that minorities do not have an equal opportunity to participate in the political process is the Voting Rights Act violated. Only when at-large voting systems are purposefully established or maintained to dilute minority voting strengths are at-large systems unconstitutional.

Official Discrimination

- Indian voters were categorically dropped from voting lists.
- Non-Indian registrants made it on to final voting lists; many Indian registrants did not.

- One Indian candidate, after driving 55 miles to the county courthouse, requested multiple voter registration cards to register potential voters on the Northern Cheyenne reservation. He was given only eleven because supplies, he was told, were limited. His non-Indian wife went into the court house shortly thereafter and received a three-inch stack of cards.

- In another instance, the election administrator numbered voter registration cards given to Indians and told them they could not get more until the numbered cards were returned. There was no evidence that a similar system was used for whites.
- The same election administrator was, according to testimony, hyper technical, looking for errors on Indian registration cards.

Racially Polarized Voting

- Plaintiffs argue that voters vote along racial lines in contests where candidates from different races oppose each other.
  - White candidates received 8 -26 % of Indian votes
  - Indian candidates received 4 – 14 % of white votes.
  - Indians were more likely to cross over and vote for whites than white voters for Indians.
  - "Pro-Indian" white candidates experienced similar challenges as Indian candidates.

Election Practices

- Questions to be examined:
  - Whether the state or county has unusually large election districts;
  - * Whether single-shot voting is prohibited;
  - * Whether there are majority vote requirements;
  - * Whether there are staggered terms;
  - * Whether candidates must run for numbered posts.

    * Tests whether, despite racially polarized voting, minorities can still elect candidates of their choice.

Election One

"Vote for One"

Number of Voters	Native	Non-Native
100	40	60

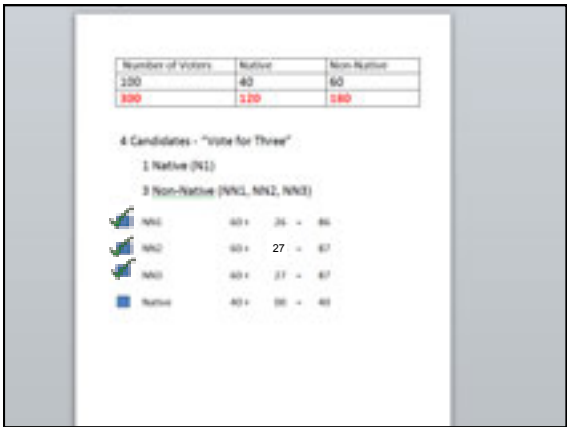
2 Candidates, one Native and one Non-Native

- Non-Native 60 votes
- Native 40 votes

Head-to-head Voting

- Minority = 40
- Non-minority = 60
  - Minority C1 = 40
  - Candidate 2 = 20
  - Candidate 3 = 20
  - Candidate 4 = 20

Total votes = 100



"Vote for Three"

Number of Voters	Native	Non Native
100	60	40
300	180	120

4 Candidates

1 Native (N1)

3 Non-Native (NN1, NN2, NN3)

NN1 40+ 40 = 80

NN2 40+ 40 = 80

NN3 40+ 40 = 80

Native 60+ 00 = 60

Remedy

- Three districts
  - One in a predominately white area.
  - One in a predominately Indian area.
  - One approximately equal in Native/non-Native residency.

Blaine County, Montana

Located in north central Montana, Blaine County is 45% Indian and home to the Fort Belknap Reservation (Gros Ventre and Assiniboine). In November 1999, the United States sued the county for its use of at-large elections, which were alleged to dilute Indian voting strength. Both the district court and court of appeals agreed that the system violated Section 2 of the Voting Rights Act. Indians were geographically compact and politically cohesive, and whites voted as a bloc to defeat the candidates preferred by Indian voters.