

# American Civil Liberties Union (ACLU)

## Indigenous Peoples' Rights

<https://www.aclu.org/legal-document/voting-rights-indian-country>

## Campaign and Advocacy

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A Special Report of the Voting Rights Project of the American Civil Liberties Union highlighting challenges on behalf of American Indians in five western states Colorado, Montana, Nebraska, South Dakota, and Wyoming to a variety of discriminatory election practices with special attention to the Voting Rights Act of 1965, its laws, restrictions, and rules, as well as subsequent amendments.

### Excerpt

This report highlights the litigation the Voting Rights Project of the American Civil Liberties Union brought, or participated in, on behalf of American Indians in five western states Colorado, Montana, Nebraska, South Dakota, and Wyoming.<sup>1</sup> The litigation challenged a variety of discriminatory election practices, including: at-large elections; redistricting plans that diluted Indian voting strength; the failure to comply with one person, one vote; unfounded allegations of election fraud on Indian reservations; discriminatory voter registration procedures; onerous identification requirements for voting; the lack of minority language assistance in voting; and the refusal to comply with the preclearance provisions of Section 5 of the Voting Rights Act.

It gives special attention to the Voting Rights Act of 1965 and its subsequent amendments, since a full understanding of the protection the act affords Indians and other covered minorities is central to realizing the goal of equal political participation. One of the most important of those provisions is Section 2, which prohibits the use of voting practices and procedures that deprive minorities of the equal opportunity to participate in the political process and elect candidates of their choice. Another important provision is Section 5, which requires "covered" jurisdictions to secure federal approval of any proposed changes in voting and demonstrate that they do not have a discriminatory purpose or effect. Section 203 of the act requires that minorities in certain designated jurisdictions be given assistance in voting in their native languages.

The report gives an overview of the volatile and often contradictory federal policy toward Indians, from treating them as independent nations, to placing them on reservations, to assimilating them and allotting their lands to whites, to giving them rights of U.S. citizenship, to terminating the reservations and tribal governments, and in more recent times to protecting the tribal system and giving Indians maximum opportunities for selfdevelopment and self-determination.

Indians have been the victims of systematic discrimination in the past, which has included the taking of Indian land, the destruction of the bison herds and the Indian way of life, the denigration of Indian language and culture, the isolation of Indians on reservations, the denial of rights of citizenship, and efforts to remove or exterminate various tribes. The effects of this discrimination continue. One consequence is a depressed socio-economic status that limits the ability of tribal members to participate effectively in local, state, and national elections and to enforce the anti-discrimination provisions of the Voting Rights Act and other federal laws protecting minority voting rights. Voting is significantly polarized along racial lines, and little meaningful interaction exists between the Indian and non-Indian communities, especially in the towns and communities that border the reservations. This lack of interaction and access to the majority community makes it very difficult for Indians to elect candidates of their choice to office in jurisdictions in which they are a numerical minority.

Indian political participation is further diminished by the disproportionate number of tribal members disfranchised for commission of criminal offenses. There is a pattern of racial profiling of Indians by law enforcement officers, the targeting of Indians for prosecution of serious crimes, and the imposition of lengthier prison sentences upon Indian defendants. These injustices result in the higher incarceration of Indians and dilute the overall voting strength of Indian communities.

Despite these obstacles, and in large measure as a result of enforcement of the Voting Rights Act and increased Indian office holding, Indian political participation has advanced significantly in recent years. To ensure that these gains continue, the ACLU calls upon local and state jurisdictions to remove barriers to equal political participation, including at-large voting, to encourage and facilitate Indian registration and voting, to conduct redistricting in a way that allows meaningful participation by the Indian community and avoids the dilution of Indian voting strength, to provide language assistance in voting, and to comply with Section 5 of the Voting Rights Act.

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