

## The American Indian Vote: A Brief History & Current Obstacles

Since first being granted citizenship 80 years ago, Native Americans have become increasingly active in the electoral process. Several major elections in the upcoming elections will be heavily influenced by Native American issues and Native voting patterns..

STATE	NATIVE POP.	NATIVE % OF POP.	PRESIDENTIAL SPREAD 2000 <sup>1</sup>
Alaska	119,241	19%	31% ( <i>Bush</i> )
Arizona	292,552	6%	6% ( <i>Bush</i> )
California	627,562	2%	11% ( <i>Gore</i> )
Colorado	79,689	2%	9% ( <i>Bush</i> )
Michigan	124,412	1%	5% ( <i>Gore</i> )
Minnesota	81,074	2%	2% ( <i>Gore</i> )
Montana	66,320	6%	25% ( <i>Bush</i> )
Nevada	42,222	2%	4% ( <i>Bush</i> )
New Mexico	191,475	11%	<1% ( <i>Gore</i> ) <sup>2</sup>
North Dakota	35,228	6%	28% ( <i>Bush</i> )
Oklahoma	391,949	8%	22% ( <i>Bush</i> )
Oregon	85,667	3%	<1% ( <i>Gore</i> ) <sup>3</sup>
South Dakota	62,281	9%	22% ( <i>Bush</i> )
Washington	158,940	3%	5% ( <i>Gore</i> )
Wisconsin	69,386	1%	<1% ( <i>Gore</i> ) <sup>4</sup>

With their increased political participation, Native Americans have become an increasingly powerful voting bloc.<sup>5</sup> In 2000, the Indian vote was credited with defeating Senator Slade Gorton in Washington State. In 2002, the Indian vote helped retain a Senate seat for Senator Johnson in South Dakota, who won by just over 500 votes, and the Arizona gubernatorial seat for Janet Napolitano. In 2004, after a Democratic candidate won a special Congressional election in South Dakota, the power of the Native American voting block was expressed by the former chairman of the National Republican Congressional Committee Rep. Tom Davis (R-Va.), “If you take out the Indian reservation, we would have won.”

However, it has been a long and difficult road to this newfound political participation and influence. Native Americans were denied the right to vote longer than any other community in the United States, and they continue to struggle against ongoing disenfranchisement and voter suppression actions.

## ***Historical Obstacles to Indian Voting***

Eighty years ago, with the passage of the *Indian Citizenship Act of 1924*,<sup>6</sup> Native Americans were first granted U.S. citizenship and the corollary right to vote-54 years after African-American men were formally enfranchised with the 15<sup>th</sup> amendment (1870), and four years after women received the same right with the 19<sup>th</sup> Amendment (1920).<sup>7</sup>

However, voting procedures are delegated to the states, and well past 1924 some states misused this power to continue to deny Native Americans the right to vote. For example, as late as 1962, New Mexico still overtly prohibited Native Americans from voting.

**Legal obstacles.** Historically, there were four major arguments used by states to justify their continued disenfranchisement of Native voters:

- 1) Indians were under federal guardianship, or were federal "wards," and therefore not independent and competent for voting;<sup>8</sup>
- 2) Indians living on reservation lands were residents of their reservation and not of the state (even though the Supreme Court declared all reservation Indians residents of their states in 1881);<sup>9</sup>
- 3) Indians did not pay state taxes and, therefore, should not be able to affect revenue decisions;<sup>10</sup> and
- 4) Indians were not "civilized," and their continued participation in their Tribal communities precluded participation in other elections.

**Cultural obstacles.** It was this last legal prohibition, the requirement that Native Americans be "civilized" before being granted the right to vote, that compounded the already complex and difficult issue of citizenship and civil participation for Natives. Many Indians had no interest in U.S. citizenship and even sought to reject it. Some believed that accepting citizenship with the very government that had oppressed one's community seemed tantamount to treason, or, at best, foolishness.

Past governmental efforts at registering or identifying community members had been for the purpose of taking land, relocating a community, or forcefully removing children to boarding schools. These experiences, ingrained in the collective memory of Native communities, are apparent in the ongoing resistance to "register" for a government ID, to "register" to vote, or, to "register" for any purpose with any governmental entity.

These concerns were only exacerbated by the requirement of many states, including Idaho,<sup>11</sup> Minnesota,<sup>12</sup> North Dakota,<sup>13</sup> and South Dakota,<sup>14</sup> that Indians had to relinquish their tribal allegiances and become "civilized," according to the majority community's standards, before they were able to vote.<sup>15</sup> The negative association between betrayal of their own community and voting has had long-lasting effects on current attitudes toward voting in the Native community.

## ***Efforts at Full Enfranchisement***

***Voting Rights Act of 1965 (VRA).*** In the 1950s and 1960s states slowly removed overt attempts at disenfranchising Native voters; this movement was reinforced by the passage of the *Voting Rights Act of 1965*. Largely enacted to protect the African-American community from systemic discriminatory voting practices, the VRA and its subsequent amendments have had significant positive impacts for the Native community as well. The VRA, among other things, prohibits any voting law or practice that "results" in discrimination on account of race, color, or language, and it has provided Native communities with a very powerful tool to ensure that the past practices of discrimination cease. Several key provisions of the VRA are up for reauthorization in August 2007.

***National Voter Registration Act.*** The *National Voter Registration Act of 1993* (NVRA), also known as the "Motor Voter" act, has helped enhance voting opportunities for every American. The two major provisions in the act were the "motor voter" provision, which requires Departments of Motor Vehicles to offer to register citizens to vote, and the mail-in voter registration provision, which allows citizens to simply mail in their voter registration form.

***Help America Vote Act (HAVA).*** In response to voting irregularities in the 2000 Presidential election, Congress passed HAVA. HAVA contains a number of provisions to enhance electoral participation, including funds to encourage states to upgrade their voting technology, the establishment of the Election Assistance Commission, the requirement of "provisional" ballots for voters, and the centralization of state voter registration systems. HAVA also contains new ID requirements for first-time voters, which many states have used to justify even more restrictive voter ID requirements.

## ***Continuing Obstacles to Indian Voting***

Even with all of the success resulting from recent legislative protections and litigation, a number of legal and cultural obstacles continue to hinder full enfranchisement of America's Native community. For example:

***Vote dilution.*** Electoral systems continue to be designed in manners that result in diluting the strength of the Native voice. At-large and multi-member voting districts, discriminatory reapportionment plans, and staggered terms can all have a negative effect on the ability of Native communities to have their electoral voice heard.

***Voter suppression tactics.*** Unfortunately, as the Native voting population turns out in larger numbers, attention to their voting influence can also attract efforts to discourage them on election day. One of the most common tactics employed in recent elections has been the challenging of Natives' voting status by poll watchers on election day.

***Restrictive ID requirements.*** There have been a number of recent state efforts at restrictive ID requirements for voters. Many Indians do not have federal or state government IDs-some due to the historical concerns previously discussed, some due to cultural issues, and others because they have not previously had a need for one. For those who do have some form of official ID, that ID is often a tribal ID card, which many states still continue to reject as acceptable voting identification.

**Linguistic barriers.** Section 2 of the *Voting Rights Act* provides for language protections for many Native communities. Efforts are made during each election cycle to ensure that language assistance is actually made available to Native voters.

**Distant poll locations.** Much of Indian Country is in very rural and remote locations. Limited state resources often place polling precincts over 60 miles from voters. With no public transportation on most reservations, limited resources for gas money, and often inhospitable weather in November, distant polls often mean disenfranchisement for Native Americans.

The recent increase in Native electoral engagement and voter participation, on the eve of the 80<sup>th</sup> anniversary of citizenship, is the result of a long legal battle and cultural discussion. While many obstacles have been removed to full enfranchisement, many others remain. This upcoming election will be the last national election before Congress begins considering reauthorization of the provisions of the *Voting Rights Act* that expire in 2007, and will help provide insight into necessary improvements and changes to continue the movement toward full enfranchisement for all Americans.

### ***Additional Resources***

*Introduction To Federal Voting Rights Laws*, United States Department of Justice, Civil Rights Division, Voting Section (as viewed October 4, 2004, [www.usdoj.gov/crt/voting/intro/intro.htm](http://www.usdoj.gov/crt/voting/intro/intro.htm)).

Jackson, Danna, *Eighty Years of Indian Voting: A Call to Protect Indian Voting Rights*, 65 Mont. L. Rev. 269 (2004).

Lehman, Russ, *The Emerging Role of Native Americans in the American Electoral Process*, First American Education Project (as viewed on October 4, 2004, [www.first-americans.net/Publications.htm](http://www.first-americans.net/Publications.htm)).

Wofley, Jeanette, *Jim Crow, Indian Style: The Disenfranchisement of Native Americans*, 16 Am. Indian L. Rev. 167 (1991).

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<sup>1</sup> Calculated from statistics available from the *National Journal*

<sup>2</sup> Under 400 votes.

<sup>3</sup> Under 7,000 votes.

<sup>4</sup> Under 6,000 votes.

<sup>5</sup> Lehman, Russ, "The Emerging role of Native Americans in the American Electoral Process," The First American Education Project (January 2003) (as viewed on October 4, 2004: <http://www.first-americans.net>)

<sup>6</sup> *Snyder Act*, June 2, 1924.

<sup>7</sup> Up until then, Indian citizenship was granted only when an Indian was deemed "competent and capable of managing his or her own affairs." (*Burke Act*, 1906)

<sup>8</sup> In Arizona, the state Supreme Court disqualified Indians from voting because they were under "federal guardianship," a status construed by the court to be synonymous with "persons under disability." A decision enforced until the court reversed itself in 1948. (*Harrison v. Laveen*)

<sup>9</sup> Utah disenfranchised Indian voters by claiming that Indians residing on reservations did not qualify as residents of the state, despite the 1881 Supreme Court decision to the contrary. This statute stood until 1957 when, under threat of reversal by Supreme Court, the state legislature abolished it.

<sup>10</sup> Idaho, Maine, Mississippi, New Mexico, and Washington prohibited "Indians not taxed" from voting as late as 1968, even though they granted the franchise to whites who were not taxed. Idaho Const. Art. VI, S 3 (1890, amended 1950); N.M. Const. Art. XII, S 1; Wash. Const. Art. VI, S 1; Miss. Const. Art. 12 S 241 (1890, amended 1968).

<sup>11</sup> Idaho Const. Art. VI S 3 (1890, repealed 1950).

<sup>12</sup> The Minnesota Supreme Court defined its constitutional provision of "civilized" Indians as those who had taken up their "abode outside the reservations and there pursuing the customs and habits of civilization." Minn. Const. art. VII, S 1, cl. 4 (1857, repealed 1960), *in re Liquor Election in Beltrami Country*, 138 Minn. 42, 163 N.W. 988 (1917).

<sup>13</sup> North Dakota's constitution contained a provision that extended the vote only to "civilized persons of Indian descent who shall have severed their tribal relations." N.D. Const. Art. V, S 121 (1889, repealed 1922).

<sup>14</sup> South Dakota prohibited Indians from voting or holding office "while maintaining tribal relations." S.D. Codified Laws Ann. S 92 (1929, repealed 1951).

<sup>15</sup> Suzanne E. Evans (University of California at Berkeley), Encyclopedia of North American Indians, Voting (Houghton Mifflin), (viewed September 28, 2004  
[http://college.hmco.com/history/readerscomp/naind/html/na\\_041800\\_voting.htm](http://college.hmco.com/history/readerscomp/naind/html/na_041800_voting.htm))