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Native Americans' Right to Vote – Selected Aspects

Keywords: Native Americans, voting rights, Indigenous Peoples' Right to Vote, violation of the voting rights

Słowa kluczowe: rdzenni Amerykanie, prawa głosu, prawo ludności rdzennej do głosowania, naruszenie prawa głosu

Abstract

The purpose of this paper is to verify the thesis that the right to vote is one of the most significant fields of Indigenous Peoples Rights' violations. History of the U.S. relations with Native tribes is a history of broken treaties and promises, including these pertaining to voting. It is vital to keep track of issues related to voting rights, not only because of the constantly increasing number of court cases related to this issue, but also several legal initiatives proposed in Congress with the aim to make the right to vote more applicable. The first part of the paper enumerates the main reasons for the denial of Indian Voting Rights. It is followed by the explanation how these limitations were implemented. The third part of the work describes how the Indigenous Americans struggled to receive the right to vote. However significant the moment of gaining the right was, it did not put an end to their struggle for equal treatment. On the contrary, a list of court cases based on Voting Rights Act violations is still extending, which is described in the fourth part of the paper. The fifth part examines contemporary issues regarding the Native Americans' right to vote.

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Streszczenie**Prawo rdzennych Amerykanów do głosowania – wybrane aspekty**

Celem artykułu jest zweryfikowanie tezy, według której czynne prawa wyborcze są jednymi z najczęściej łamanych praw przysługujących ludności rdzennej. Historia stosunków USA z plemionami Indian Ameryki Północnej charakteryzuje się szeregiem zerwanych traktatów i niedotrzymanych obietnic, w tym dotyczących praw wyboru przedstawicieli na poszczególnych szczeblach władzy. O ważkości opisywanych zagadnień świadczy nie tylko systematycznie rosnąca liczba spraw sądowych dotyczących praw wyborczych, ale także szereg inicjatyw prawnych zaproponowanych w amerykańskim Kongresie w celu lepszego ich egzekwowania. W pierwszej części artykułu wymieniono główne przyczyny pozbawiania Indian czynnych praw wyborczych. Następnie wyjaśniono, w jaki sposób ograniczenia te zostały wdrożone. W trzeciej części autorzy wskazali na najważniejsze etapy, jakie musieli pokonać rdzenni Amerykanie w procesie ubiegania się o zagwarantowanie prawa do głosowania. Ostateczne uzyskanie czynnych praw wyborczych nie zakończyło walki rdzennych Amerykanów o równe traktowanie. Wręcz przeciwnie, lista spraw sądowych opartych na naruszeniach Ustawy o prawie do głosowania wciąż się rozszerza, co opisano w czwartej części artykułu. Część piąta analizuje współczesne kwestie dotyczące czynnego prawa wyborczego Indian Ameryki Północnej.

I. Introduction

Even though Native Americans (enrolled tribal members) comprise less than 10 percent of eligible voters in most of the American states, attention paid toward them by media is disproportionately small³. Obviously, before elections, both presidential and congressional, politicians are more attentive to Indigenous Peoples' interests. The main reason for this trend, be-

³ M. Vigil-Hayes, M. Duarte, N. Deschine Parkhurst, E. Belding, *#Indigenous: Tracking the Connective Actions of Native American Advocates on Twitter*, "CSCW '17 Proceedings of the 2017 ACM Conference on Computer Supported Cooperative Work and Social Computing" 2017, pp. 1387–1399; J.T. Tucker, *The Battle Over Bilingual Ballots. Language Minorities and Political Access Under the Voting Rights Act*, London 2009.

sides natural willingness to collect as many votes as possible, is awareness that voter participation, when increased, can noticeably change demographic in elections⁴. The mentioned selfishness, presented by American politicians, is a continuation of the way Native Americans are treated by federal government. Besides the fact that it took decades to officially recognize Indigenous Peoples' rights to vote⁵, that privilege is barely respected by both state and federal institutions. First and most important fact about Native citizens' right to vote is its gradual and often "painfully slow" extension⁶. Furthermore, probably as a consequence of the foregoing, the percentage of Indians registered to vote is relatively low. For example, there were only 15–20 percent of Native Americans eligible to vote in New Mexico and Arizona during presidential election in 2000⁷. Surprisingly, nowadays, this question is neither easily answered, not only because of the fact that Native Americans' participation in elections differs from one tribe to another. It is also lack of information that prevents scholars from making conclusions⁸. According to Tracy Skopek, "Much research over the years has been conducted on the voting participation of various minority groups such as African Americans and Hispanics. However, less attention has been paid in the scholarly literature to voter turnout among Native American voters"⁹. It

⁴ *Native American Voting Rights*, <http://firstpeoples.org/wp/native-american-voting-rights> (28.08.2019); S.L. Pevar, *The Rights of Indian and Tribes. The Basic ACLU Guide to Indian and Tribal Rights*, New York 1992, p. 234.

⁵ One of the courts noted in a 2001 decision, that "[t]here is ample evidence that American Indians have historically been the subject of discrimination in the area of voting". S.L. Pevar, *op.cit.*, p. 268.

⁶ D. McCool, *Indian Voting*, [in:] *American Indian Policy in Twentieth Century*, ed. V. Deloria, Jr., Norman 1985, p. 105; R. Costo, J. Henry, *Indian Treaties: Two Centuries of Dishonor*, San Francisco 1977, pp. 1–37.

⁷ D. Chavers, *Racism in Indian Country*, New York 2009, p. 183.

⁸ "For a subject worked and reworked so often in novels, motion pictures, and television, American Indians remain probably the least understood and most misunderstood Americans at all", John F. Kennedy, President of the United States of America. J.F. Kennedy, *Introduction*, [in:] *The American Heritage Book of Indians*, ed. A.M. Josephy, JR, Rockville 1961.

⁹ T. Skopek, A. Garner, *The Disappearing Turnout Gap between Native Americans and Non-Native Americans*, "American Indian Culture and Research Journal" 2014, vol. 38, No. 2, pp. 1–16; Lack of information about voting behavior of Native Americans seems to make Tracy Skopek's thesis more credible. R.D. Cantor, *Voting Behavior & Presidential Elections*, Itasca 1975.

should be pointed out that this situation is likely to be changed due to the development of the Tribal Critical Race Theory. Indigenous Peoples' right to vote, as one of the most important and basic citizens' rights, is obviously included in the nine tenants of TribalCrit, formulated by Bryan McKinley and Jones Brayboy and presented in their paper entitled "Toward a Tribal Critical Race Theory in Education"¹⁰. However, it will take considerable time to collect necessary information about the phenomenon being analyzed in this essay. Gail Small suggested that it will also take time for Indians to understand that "they have the right to participate in the voting process and the right to ask for services"¹¹.

An important question remains: how that lack of information, together with numerous violations of Indian right to vote, refers to the national concept of unity in diversity (*E pluribus unum*)? Following the will of the Founding Fathers, the United States (a single nation) consists of many states (former colonies), that were – and often still are – different in terms of peoples, races, religions, languages¹². Theoretically, all citizens should be equal. Having their rights guaranteed e.g. by the 14th Amendment (1868)¹³, or by the most recently ratified document – the United Nations Declaration on the Rights of Indigenous Peoples (endorsed by the United States in 2010)¹⁴, Indians can vote not only in tribal, but also local, state and national elections.

The purpose of this paper is to prove the thesis that the right to vote is one of the most significant fields of Indigenous Peoples Rights' violations. History of the U.S. relations with Native tribes is a history of broken treaties and promises, including these pertaining to voting. It is vital to keep track of issues related to voting rights, not only because of the constantly increasing number of court cases related to this tissue, but also several legal initiatives proposed in Congress with the aim to make the right to vote more applica-

¹⁰ B. McKinley, J. Brayboy, *Toward the Tribal Critical Race Theory in Education*, "The Urban Review" 2006, vol. 37, No. 5, pp. 429–430.

¹¹ M.J. Hill, *Indian Voices Rising: Native Activists Aim at '96 Elections*, "Tribal College. Journal of Native American Higher Education" 1996, vol. 8, No. 1.

¹² *E Pluribus Unum*, <http://www.encyclopedia.com/doc/1G2-3401801298.html> (28.08.2019).

¹³ *14th Amendment to the U.S. Constitution*, <https://www.loc.gov/rr/program/bib/our-docs/14thamendment.html> (28.08.2019).

¹⁴ W. Echo-Hawk, *In the Courts of the Conqueror*, Golden 2010, pp. 27–29.

ble. The main research method applied for this paper is content analysis: analysis of the legal documents, literature, and press materials. Implementation of this qualitative approach seems to properly reflect the question being asked.

The first part of the paper enumerates the main reasons for the denial of Indian Voting Rights. It is followed by the explanation how these limitations were implemented. The third part of the work describes how the Indigenous Americans struggled to receive the right to vote. However significant the moment of gaining the right was, it did not put an end to their struggle for equal treatment. On the contrary, a list of court cases based on Voting Rights Act violations is still extending, which is described in the fourth part of the paper. The fifth part examines contemporary issues regarding the Native American's right to vote.

II. The Main Reasons for the Denial of Indian Voting Rights

Although the “right to vote” was not explicitly mentioned in the U.S. Constitution when it came into force in 1789, it appeared in the following amendments. The Fifteenth Amendment deserves being quoted especially, because of the impact it has made on the Native Americans. According to Section 1 of the Fifteenth Amendment, “[t]he 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”¹⁵. The fact that the Fifteenth Amendment was ratified in 1870¹⁶ and Voting Rights Act was passed in 1965 suggests that governments on both local and federal level were trying to circumvent the law and deny the right to vote to the Native American. The reason for the unwillingness to grant the law to this ethnic group may be explained by Charles L. Zelden in his book entitled “Voting Rights on Trail.” He states frankly that Native Communities “simply did not fit into dominant concep-

¹⁵ U.S. *Constitutional Amendments*, <http://constitution.findlaw.com/amendments.html#sthash.QynCi7lP.dpuf> (28.08.2019).

¹⁶ Citizenship for every Indians born in the United States has been granted by the 1924 Citizenship Act, so theoretically since that time Native American's right to vote should not be questioned, *Congress Granted Citizenship to All Native Americans Born in the U.S.*, http://www.americaslibrary.gov/jb/jazz/jb_jazz_citizens_1.html (28.08.2019).

tions of what it meant to be an American”¹⁷. Together with Asians, Hispanics, and African Americans they were seen as “direct threats to the social order – threats so great as to demand extreme action”¹⁸.

Daniel McCool pointed out “[a]lthough the United States Constitution now prohibits voting discrimination, it leaves to the states the authority to select the “times, places, and manner” of holding elections. Thus, each state has established requirements for voter registration. Some state that voting requirements have presented problems for Indian tribes, which are immune from most areas of state law”¹⁹. In spite of the fact that the word “now” used by the author relates to the situation that took place in the United States in 1980s, it seems to be useful for latter analysis in realizing what kind of justifications were used by different states to deprive Native Communities of the right to vote. Repeating after Daniel McCool, the strategies devised by settler colonizers to achieve their goal can be divided into three main categories:

- constitutional ambiguity – problems such as Indians’ citizenship²⁰, guardianship clause present in most of the state constitutions (in relation to the voting rights),
- political and economic justifications – the issue of questionable loyalty (government vs. tribal affiliation), which later became a question of patriotism, Indians’ potential impact on politics, possibility of Indians being a part of revenue decision making process, which could potentially impose financial burdens,
- cultural and racial discrimination – conflicting responses to the “Indian problem:” voting seen as abandonment of traditional Indian culture vs. voting impossible because Native Communities are not a part of the “Anglo society”²¹.
- Categories distinguished by Daniel McCool can serve as a complexed set of the voting rights denial justifications used by states before the

¹⁷ C.L. Zelden, *Voting Rights on Trail*, Santa Barbara 2002, pp. 58–59.

¹⁸ Ibidem, p. 59.

¹⁹ D. McCool, *Indian Voting...*, pp. 105–106.

²⁰ Since the United States’ formative years, Indian tribes were perceived as sovereign nations. “By definition, this made Indians noncitizens lacking all rights to vote”. C.L. Zelden, *op.cit.*, p. 64.

²¹ D. McCool, *Indian Voting...*, pp. 106–116.

adoption of the Voting Rights Act in 1965. Regarding the legal practice, the most common grounds on which states resisted Indigenous Peoples' right to vote were:

- “non-payment of state taxes by Indians in Indian country (even though taxpayer status was not required of non-Indian voters)”²²,
- guardianship over the Native Americans, who were not legally competent to participate in elections,
- different status of the residence in Indian country than the residence within the state for voting purposes²³.

However, it should be pointed out that all of the listed state arguments have been discredited by the U.S. court system, e.g. as a result of the famous *Harrison vs. Laveen* court case (Arizona, 1948), or *Montoya vs. Bolack* (New Mexico, 1962)²⁴.

III. Ways of Discrimination

In their book entitled “Native Vote. American Indians, the Voting Rights Act, and the Right to Vote,” Daniel McCool, Susan M. Olson and Jennifer L. Robinson enumerated different strategies implemented by states in order to limit or prevent Indian voting. Because of the importance of those methods and the possibility of reusing them, it is worth including them in this part of the paper. One of the most significant strategies affecting Native Americans' right to vote were:

- state constitutions – some of them explicitly limited Native Americans' right to vote, e.g. state constitutions of California, Idaho, New Mexico, Washington, the Dakotas, Minnesota,
- residency – according to some states, the Indigenous Americans were not residents of the state where they practically resided, although the Indian Citizenship Act passed in 1924 clearly approached that problem,
- self-termination – important question whether Indians abandoned their tribal ties in order to vote, or not, continued to be unanswered,

²² W.C. Canby, JR, *American Indian Law in a Nutshell*, St. Paul 2009, pp. 390–391.

²³ *Ibidem*, p. 391.

²⁴ *Ibidem*.

- taxation – “Indians not taxed” excluded from the voting booth in some states, e.g. Idaho, Maine, Mississippi, New Mexico, Washington,
- guardianship – a phrase applied to people who were “legally under the supervision and control of a person or agency designed by the Court”²⁵. In other words, “insane,” “idiots,” “incompetents” were deprived of the right to vote in almost every state in the Union,
- literacy – illiterates prohibited from voting in some states, e.g. in Arizona, where only people who could read the Constitution of the U.S. could vote,
- protecting the Status Quo – efforts to maintain Native Americans’ power²⁶.

Noteworthy, not only the Native American Communities have been discriminated by states in terms of their voting rights. There were also many tactics aiming at blocking potential voters with African American identity, such as literacy and understanding tests, complicated registration requirements, poll taxes, or white-only voting in Democratic Party primary elections²⁷. Those tactics, however successful, did not include voting rights negation caused by the doubts about the citizenship, guardianship status and loyalty issues, at the same level as in the case of Native Americans.

IV. Brief History of Indigenous Peoples’ Right to Vote

During the first few decades after winning independence from the Great Britain, all of the thirteen states already had their own election systems, which usually guaranteed the right to vote only to free adult males. In some of those states, there was an additional requirement of owning a property²⁸. Therefore, nearly half of the white male population could participate in elections²⁹. How-

²⁵ D. McCool, S.M. Olson, J.L. Robinson, *Native Vote. American Indians, the Voting Rights Act, and the Right to Vote*, New York 2007, pp. 14–15.

²⁶ Ibidem, pp. 10–19.

²⁷ L. Epstein, T.G. Walker, *Constitutional Law For A Changing America*, Washington D.C. 2004, p. 794.

²⁸ Ibidem, p. 791.

²⁹ C.C. Euchner, A.J. Maltese, *The Electoral Process*, [in:] *Selecting the President from 1789 to 1996*, Washington D.C. 1997, p. 21.

ever strict those restrictions seem, comparing to the European standards, the United States was considered as liberal in granting the right to vote, even if women, slaves, the Native Americans, minors, and the poor, sometimes also the Jews and the Catholics, were prohibited from voting³⁰.

Certain progress in terms of eliminating legal barriers on the way to the ballot was achieved in 1810 (religious requirements eliminated) and 1850 (tax and property ownership requirements eliminated), but in the second part of the 19th century, still only adult white males could vote. Changing the reality was not easy, considering the fact that those who had the right to vote generally did not want to allow the others to receive “their” privilege³¹. At the same time, the role of Manifest Destiny as a justification of U.S.’s superiority and expansionism cannot be overestimated, especially during the pre-Civil War era. It was argued that “inferior races did not use the land properly and impeded progress. [...] They must give way before superior races, some, like African Americans, doomed to perpetual subservience, others, like Indians, to assimilation or extinction”³². Even though Manifest Destiny was more a sectional than national phenomenon (strongly supported by the Northeast and Northwest states, less popular in the South), racism toward the Native Americans was rooted too deeply in American culture to allow them to participate in elections³³.

Until 1870, when the Fifteenth Amendment was passed, “the reigning doctrine was that Indians, as domestic dependents, were not citizens and thus could not vote. The Fourteenth Amendment [1868, M.D.], however, called this understanding into question. [...] By a literal reading of the Fourteenth Amendment, this [the fact that Indians were born within the U.S. borders, M.D.] should have made Indians citizens with all the rights of citizenship, in-

³⁰ Ibidem.

³¹ During his visit in the United States, Alexis de Tocqueville, French political thinker and historian, author of the *Democracy in America* found Americans enthusiastic about voting. He also noted, that however the old requirements that restricted voting to white male property holders were disappearing, the process of change was slow and full of obstacles. D.W. Rogers, *Voting and the Spirit of American Democracy*, Chicago 1992, p. 3.

³² G.C. Herring, *From Colony to Superpower. U.S. Foreign Relations since 1776*, New York 2008, p. 181.

³³ Ibidem; E.M. Garrouette, *Real Indians*, Oakland 2003, pp. 14–37.

cluding the right to vote”³⁴. Although it was difficult to justify claiming citizenship for the Native Americans who lived in reservations, thinking about it in relation to Indigenous people who lived and worked in the general population, paid taxes, and sometimes even intermarried with white Americans, seems to be reasonable³⁵.

Regardless of how reasonable the mentioned argument seems to be, it was the Fifteenth, not the Fourteenth Amendment to the Constitution of the U.S. that literally forced significant changes. It guaranteed former slaves voting rights and protected the voting rights of citizens of any race (but still regulations were limited to adult males)³⁶. Implementation of the Fifteenth Amendment differed from state to state. Some of the states provided additional requirements, as it was mentioned in the previously. For instance, the nation’s first literacy test was adopted by Connecticut in 1855. In 1889 Florida adopted a poll tax, and so did many other southern states. After adopting literacy test by Mississippi in 1890, this method of preventing African Americans from voting was implemented in other states, this time not only southern ones. The year 1920 is a groundbreaking date for women, since, as a result of introducing the Nineteenth Amendment, they were guaranteed the right to vote³⁷.

The significance of the law passed in 1924 cannot be overestimated, especially for Indigenous Peoples. This is the year of the adoption of the Indian Citizenship Act that granted citizenship to all Native Americans born in the United States who had not received that status before. Since then, they have possessed “the same rights, privileges, and obligations as other citizens”³⁸. As it was mentioned previously, many states did not desire to accept Indians as equals, which was visible especially due to the lack of recognition of their political rights. Many examples of problems with rights’ recognition have been witnessed, such as constitutional provisions, court cases or laws passed by states³⁹. Most importantly, even after the adoption of the Fifteenth Amend-

³⁴ F. Gaillard, *Alabama’s Civil Rights Trail*, Tuscaloosa 2010, p. 95.

³⁵ Ibidem.

³⁶ *U.S. Voting Rights*, <http://www.infoplease.com/timelines/voting.html> (29.08.2019).

³⁷ Ibidem.

³⁸ W.A. Brophy, S.D. Aberle, *The Indian. America’s Unfinished Business*, Norman 1966, p. 16.

³⁹ D. McCool, S.M. Olson, J.L. Robinson, *op.cit.*, p. 9.

ment, “[t]he states [have] tended to view Indian voting and Indian citizenship as two separate items”⁴⁰.

After World War II, when the process of political mobilization started, Native American leaders are said to have unlocked new political doors. As the Indians often tried to ally themselves into influential political groups previously, taking initiative by intertribal associations is a significant change. Thomas W. Cowger pointed out that it was in 1944 when “Indians took control of their own destinies through the establishment of the NCAI (National Congress of American Indians)”⁴¹. Although the Indian Citizenship Act was adopted, it took more than forty years for all American states to allow the Native Americans to actively participate in elections. A significant progress was achieved in Arizona in 1948, when the Supreme Court overruled a provision of Arizonian constitution that made Indians voting legally impossible⁴². Other states undertook similar actions and, as a consequence, New Mexico was the last state to allow Native Americans to vote in state and local elections (1962)⁴³.

The decade of 1960s was as a time of political reorganization in the American history. During this time, growing Indian awareness of the value of the ballot, as well as willingness to seek fairness, justice, and better treatment, placed the Native Americans together with other people of color in their struggle for equality⁴⁴. Although African-American Civil Rights Movement appeared be-

⁴⁰ *American Indian Voting Rights*, <http://nativeamericannetroots.net/diary/352> (29.08.2019).

⁴¹ T.W. Cowger, *The National Congress of American Indians. The Founding Years*, Omaha 1999, p. 151.

⁴² *Native American Voters*, <http://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/elections/voters9.html> (29.08.2019).

⁴³ D. Champagne, *Reference Library of Native North America*, vol. I, Farmington Hills 2001, p. 66.

⁴⁴ This is how William L. Iggiagruk Hensley, Native Alaskan activist, recalls the protests which were part of Civil Rights Movement, that he had chance to attend: “[i]t was with my friend Hank Adams, an Assiniboine-Sioux Indian, that I attended the March on Washington in August 1963. Hank went on to become a key strategist on Indian fishing treaty rights in Washington State and a close friend of Marlon Brando’s. What a memorable day that was! Martin Luther King, Jr., delivering his “I Have a Dream” speech at the Lincoln Memorial... the two hundred thousand marchers setting off from the Capitol Building... There’s a picture of me among them, and it is a treasured memento because that march put the civil rights movement squarely in the national headlines”. W.L. Iggiagruk Hensley, *Fifty Miles from Tomorrow*, New York 2009, p. 105; W.T. Hagan, *American Indians*, Chicago, 1993, p. 177.

tween 1954 and 1968⁴⁵, tribally organized protests occurred also throughout the 1970s. Much of that is known as the Red Power Movement – a period that revealed “the emergence of larger-than-tribal or supratribal American Indian identification and organization”⁴⁶. The main purpose of the Native American activism undertaken in that period, both on tribal and broader level, was to show members of all minority groups that political system could be organized with respect to the principles of law and justice, part of which was a full enforcement of the voting rights.

The U.S. Congress passed the Voting Rights Act in 1965. It was later signed by President Lyndon B. Johnson and called a crowning achievement of the process began by the adoption of the Fifteenth Amendment ratified in 1870. The legacy of the Fifteenth Amendment is visible especially in the Section 2 of the Act, according to which: “No voting qualifications or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color”⁴⁷. Importantly, unlike some later regulations, Section 2 is permanent and must be applied in every single state, regardless of other laws and voting practices⁴⁸. Among other provisions, the Voting Rights Act was designed to prevent potential discrimination in areas where their occurrence was the most probable. The Act was later renewed and expanded in 1970, 1975, 1982, 1992, and 2006⁴⁹. Due to the Voting Rights Act of 1970, the minimum age for all elections was lowered from twenty-one to eighteen. It became legally forbidden to discriminate persons whose primary language is other than English⁵⁰. Furthermore, as a result of the adoption of the same doc-

⁴⁵ Details about the most important events of the Civil Rights Movement, some of which included support from the Native tribal activists, can be found in the book entitled *Alabama's Civil Rights Trail* by Frye Gaillard. F. Gaillard, op.cit.

⁴⁶ The definition of the Red Power Movement is attributed to Vine Deloria, Jr., author of *Custer Dies for Your Sins*, one of the most influential contemporary Native American intellectual activists. V. Deloria, JR, *Custer Died for Your Sins*, Norman 1988, pp. 186–187; S. Lobo, S. Talbot, *Native American Voices: A Reader*, Upper Saddle River Prentice-Hall 2001, p. 499.

⁴⁷ Voting Rights Act of 1965 (S. 1564).

⁴⁸ D. McCool, S.M. Olson, J.L. Robinson, op.cit., p. 22.

⁴⁹ *History of Federal Voting Rights Laws*, <https://www.justice.gov/crt/history-federal-voting-rights-laws> (30.08.2019); D. McCool, S.M. Olson, J.L. Robinson, op.cit., pp. 25–35.

⁵⁰ W.L. Iggiagruk Hensley, op.cit., p. 233.

ument, states became prohibited from “disqualifying voters in presidential elections because of their failure to meet state residence requirements beyond thirty days, what is a significant issue especially for Native Americans”⁵¹.

The adoption of the Voting Rights Act, however significant, did not annihilate problems with the Native Peoples' equal access to voting. There are many court cases (more details can be found in the next section of the paper) which suggest that the work on making the Act more applicable and effective should be continued. The Voting Rights Advancement Act of 2015, introduced in House on June 24, 2015, can serve as an example of actions undertaken recently⁵². It should be also pointed out that consciousness about the importance of making law more applicable can be seen in both the Republican and Democratic Parties⁵³.

V. Certain Examples of Violation of the Voting Rights Act

Due to the nature of this paper, and especially its size restrictions, it is impossible to describe every court case worth mentioning. It is enough to say that some of them are well-known, some have never been discussed neither by media, nor academics. Some cases have had significant importance for Native Peoples and have been ruling models for courts at different levels. There is only one common characteristic feature that connects all cases: their subject. Every single court case, either mentioned in this part of the essay, or – for various reasons – omitted, has affected people's lives. This is why particular cases should be discussed in the same way, with respect and curiosity, without simplifying and judging. As it was mentioned before, the

⁵¹ L. Epstein, T.G. Walker, op.cit., p. 657.

⁵² After being introduced House, on July 9, 2015 Voting Rights Advancement Act of 2015 has been referred to the Subcommittee on the Constitution and Civil Justice, Voting Rights Advancement Act of 2015 (H.R.2867).

⁵³ Historically, concerns about making Voting Rights Act more applicable arise more likely within Democratic than Republican Party. However, there are also examples of quite opposite trend. Most recently, Senator Lisa Murkowski of Alaska became the first Republican to support governmental legislation to restore the Voting Rights Act; *Restoring the Voting Rights Act Now Has Bipartisan Support*, <http://www.thenation.com/article/restoring-the-voting-rights-act-now-has-bipartisan-support> (30.08.2019).

nature of this paper makes describing individual cases impossible. However, it is worth enumerating them, at least to realize their number. The list of the court cases pertaining to violation(s) of the Voting Rights Act includes the following:

- Apache County v. United States, District of Colombia, 1966,
- Klahr v. Williams, Arizona, 1972,
- Independent School District of Tulsa v. Bell, Oklahoma, 1977,
- United States v. Town of Bartelme, Wisconsin, 1978,
- United States v. Humboldt County, Nevada, 1978,
- United States v. San Juan County, New Mexico, 1980,
- Goddard v. Babbitt, Arizona, 1981,
- U.S. v. San Juan County, Utah, 1983,
- Windy Boy v. County of Big Horn, Montana, 1986,
- Cuthair v. Montezuma-Cortez, Colorado School District, Colorado, 1989,
- Stebler v. Thurston County, Nebraska, 1993,
- U.S. v. Parshall School District, North Dakota, 1996,
- Stabler v. County of Thurston, Nebraska, 1997,
- Cuthair v. Montezuma-Cortez, Colorado School District, Colorado, 1998,
- Alden v. Board of County Commissioners of Rosebud County, Montana, 1999,
- Matt v. Ronan School District 30, Montana, 2000,
- United States v. Blaine County, Montana, 2004,
- Quiver v. Nelson, South Dakota, 2005,
- Bone Shirt v. Hazeltine, South Dakota, 2006⁵⁴.

The number of court cases based on the Voting Rights Act violations, however high, is still increasing. Surprisingly, there are plenty of most recent cases, which makes the problem outlined in this essay even more accurately identified. One of the most famous issues is the fact that Native Americans challenge strict identity documents requirements in North Dakota. Many Indians living in reservations do not have identity documents with a residential address, which is required by state legislature. At the same time, listing a post office box, helpful in some states, is unac-

⁵⁴ D. Chavers, *op.cit.*, pp. 184–192; D. McCool, S.M. Olson, J.L. Robinson, *op.cit.*, pp. 48–67; L. McDonald, *The Voting Rights Act in Indian Country: South Dakota, a Case Study*, “American Indian Law Review” 2004, vol. 29, No. 1, p. 43.

ceptable, as it does not have a lot in common with establishing residency⁵⁵. Significant violations connected with the access to voting site have been reported in South Dakota, where Oglala Sioux Tribe sued Jackson County for its failure to provide a satellite voting site on the Pine Ridge Reservation⁵⁶. A similar problem has been noticed in Montana, where Crow, Northern Cheyenne and Fort Belknap accused state authorities for violating the Voting Rights Act by refusing to set up a satellite voting offices in their reservations before presidential election of 2012⁵⁷. Issues connected with the level of adjustment of voting infrastructure have been reported in Colorado, Montana, and South Dakota⁵⁸.

Problems with access to vote are also serious in Alaska. In the paper entitled "Past Road's End, Democrats Dog for Native Votes", Jeremy W. Peters suggests that "the Democrat voters' need to turn out are spread over huge distances"⁵⁹. Such situations seem to occur quite frequently. Taking into consideration the Native Communities, as well as the reputation of the U.S.'s as the world's "model democracy", it is extremely important to eliminate problems like the mentioned ones and provide access to voting sites

⁵⁵ D. McCool, S.M. Olson, J.L. Robinson, op.cit., p. 16.

⁵⁶ DOJ Weighs in on South Dakota's Native American Voting Rights Lawsuit, *Plus Media Solutions*, January 14, 2015; U.S. attorney scolds county on voting law, *Legal Monitor Worldwide*, January 3, 2015.

⁵⁷ Tribes kept from voting, lawsuit claims, *USA Today*, March 19, 2013; Tribes' lawsuit could decide who controls Senate in 2015, *The Hill*, July 16, 2013; Montana's North Cheyenne reservation fighting to secure voting rights, *The Guardian*, October 7, 2013.

⁵⁸ "In 1991 the South Dakota legislature adopted a redistricting plan for the state House of Representatives in an area of the state that has a high Indian population but in which no Indian had ever been elected, despite the fact that Indians occasionally appeared on the ballot. Under the new plan, a district was created that for the first time would contain a majority (percent) of Indians. However, just before the next election, the legislature abolished that district and, by reconfiguring the districts, reduced the Indian population in any district to no more than 36 percent. Indian voters filed a lawsuit challenging the new plan, citing both the Voting Rights Act and provisions of state law. The court ruled in favor of the Indian plaintiffs, requiring the state to restore the 1991 plan, and in the very next election, an Indian was elected from the majority-Indian district". S.L. Pevar, op.cit., p. 269. Necessity of redrawing some of the voting districts to conform to the requirements of the Voting Rights Act of 1965, as well as recent Supreme Court decisions, has been also noticed by Eva Marie Garrouette in her book *Real Indians. Identity and the Survival of Native America*. E.M. Garrouette, op.cit., p. 8.

⁵⁹ Past Road's End, Democrats Dig for Native Votes, *The New York Times*, June 29, 2014.

for the Native Americans. Without meeting these conditions, equality cannot be achieved.

VI. Concluding Remarks

The purpose of this paper was to prove the thesis that the right to vote is one of the most significant fields of Indigenous Peoples Rights' violations. It has been shown that the history of the United States relations with Native tribes witnessed broken treaties and promises, including these pertaining to voting. Looking at the present political and social issues, it is vital to keep track of issues related to voting rights, not only because of the constantly increasing number of court cases related to this problem, but also several legal initiatives proposed in Congress with the aim to make the right to vote more applicable.

It is not easy to find complex information about the Native Americans participating in presidential elections. Quite a detailed research was conducted by Daniel McCool who published it in "American Indian Policy in the Twentieth Century" edited by famous Vine Deloria, Jr. According to the author's research, ten years after the adoption of the Voting Rights Act, only 43 percent of eligible voters participated in elections⁶⁰. McCool's survey conducted in Arizona is an important database. Based on it, it could be stated that the Native Americans are generally more likely to vote Democratic⁶¹. This statement appears justified by the research recently carried out by Jeonghun Min and Daniel Savage from the Northeastern State University. Both scholars, who conducted their survey in Oklahoma, have recently published its results in the paper entitled "Why do American Indians vote Democratic?"⁶² The most interesting conclusions found in their paper refer to the Native Americans political preferences and are as follows: "American Indians are responsible for

⁶⁰ D. McCool, *Indian Voting...*, p. 126.

⁶¹ Obviously, there are many exceptions from this statement and results can be different, depending on kind and level of elections, particular candidate and/or his program; *Ibidem*, pp. 119–121.

⁶² J. Min, D. Savage, *Why do American Indians vote Democratic?* (Paper presented at the Western political Science Association Annual Meeting in Seattle, WA, on April 17–19, 2014), [http://wpsa.research.pdx.edu/papers/docs/Why%20Do%20American%20Indians%20Vote%20Democratic%20\(Jeonghun%20Min\).pdf](http://wpsa.research.pdx.edu/papers/docs/Why%20Do%20American%20Indians%20Vote%20Democratic%20(Jeonghun%20Min).pdf) (30.08.2019).

the survival of the Democratic Party in the region primarily because of their poverty” and “American Indians’ voting behavior is not affected by their cultural ties”⁶³.

The Native Americans serve at all levels of federal, state, and local governments, and – despite difficulties – have been doing so for most of the 20th century⁶⁴. The most recognizable Indian leaders at that time were: William Wirt Hastings, Charles Curtis, Will Rogers, Matthew Stanley Quay, or Robert L. Owen⁶⁵. Even today, more and more Native American Activists successfully become their representatives of their communities, of which the best example of is the case of William L. Hensley. He will be remembered not only as an incredible intellectual activist, but also as an effective politician. Due to his efforts in 1971, after many years of lobbying, the U.S. Congress passed the land settlement, which was called “the most sweeping and fairest” Native American land settlement in the whole century⁶⁶.

Today, the Native Tribes are reported to be increasingly savvy politically⁶⁷. Apart from the Native Americans elected for community representative roles, the number of non-elected native advocates active in national politics have significantly increased in the last forty years. Peoples/Tribes such as the Navajo, Chickasaw, or Saginaw Chippewa, maintain full-time offices in Washington, D.C.⁶⁸. Their representatives continuously organize meetings with members of local community, not only officially enrolled ones, in order to maintain close relationships and be informed about the issues that their communities are facing on a daily basis.

Considering the experiences from the past, it is worth asking questions about possible scenarios for political involvement of the Native Americans in the future. Regarding the issue of participation in elections, prognoses are rather optimistic. Tribal leaders are reported to be “more astute and effective operating in the American political system, and the American public has be-

⁶³ Ibidem, p. 18.

⁶⁴ D.A. Mihesuah, *American Indians Stereotypes and Realities*, Atlanta 1996, p. 95.

⁶⁵ Ibidem, pp. 95–96.

⁶⁶ W.L. Iggiagruk Hensley, op.cit., p. 210.

⁶⁷ E.C. Henson, J.B. Tatlor, *The State of the Native Nations Conditions under U.S. Policies of Self-Determination*, New York 2008, p. 61.

⁶⁸ Ibidem.

come slightly more aware of and knowledgeable about what is happening in Indian country, which helps generate outside support”⁶⁹. The only danger may stem from the voting rights enforcement. If it continues to be violated on the state and local level, achieving progress is hard to imagine.

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⁶⁹ A. Treuer, *Everything You Wanted to Know about Indians but Were Afraid to Ask*, St. Paul 2012, p. 124.

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