

The Voting Rights Act's Pre-Clearance Provisions: The Experience of Native Americans in South Dakota [ABSTRACT]

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During the 1965 debates over the Voting Rights Act, there are only two brief mentions of Native Americans. During the Act's 1975 renewal, Native Americans were mentioned only with respect to their inclusion under the minority language provisions. At no point did the applicability of Section 5's pre-clearance provisions to political jurisdictions with histories of discrimination against Native Americans generate discussion. They also were ignored in the Supreme Court's 2013 *Shelby County v. Holder* decision, where Section 4(b) that established the criteria for establishing Section 5 covered jurisdictions was found to be unconstitutional. In this paper, we examine struggles over Section 5 pre-clearance in South Dakota, as well as the challenges of legal attempts to establish "covered jurisdictions" using the more stringent standard required in Section 2. We focus on South Dakota because it is a state with a long, troubled history of discrimination towards Native peoples. It also is the state with the highest number of voting rights cases involving Native Americans. Although a state that has been labeled "the Mississippi of the North" is an extreme case, we argue that it is precisely those settings that make pre-clearance so critical.

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