

Native American Voting Rights in Montana

State-Tribal Relations Committee
Montana Legislature
January 13, 2022

Monte Mills
Professor, Co-Director
Margery Hunter Brown Indian Law Clinic

Native American Voting Rights in Montana

- General Background and Context
- History in Montana
- Recent cases and challenges

Race, Sovereignty, and Citizenship

- U.S. v. Rogers, 45 U.S. 567, 573 (1846):
 - “Whatever obligations the prisoner may have taken upon himself by becoming a Cherokee by adoption, his responsibility to the laws of the United States remained unchanged and undiminished. He was still a white man, of the white race, and therefore not within the exception in the act of Congress.”
- Elk v. Wilkins, 112 U.S. 94, 106-7 (1884):
 - “But the question whether any Indian tribes, or any members thereof, have become so far advanced in civilization that they should be let out of the state of pupilage, and admitted to the privileges and responsibilities of citizenship, is a question to be decided by the nation whose wards they are and whose citizens they seek to become, and not by each Indian for himself.”

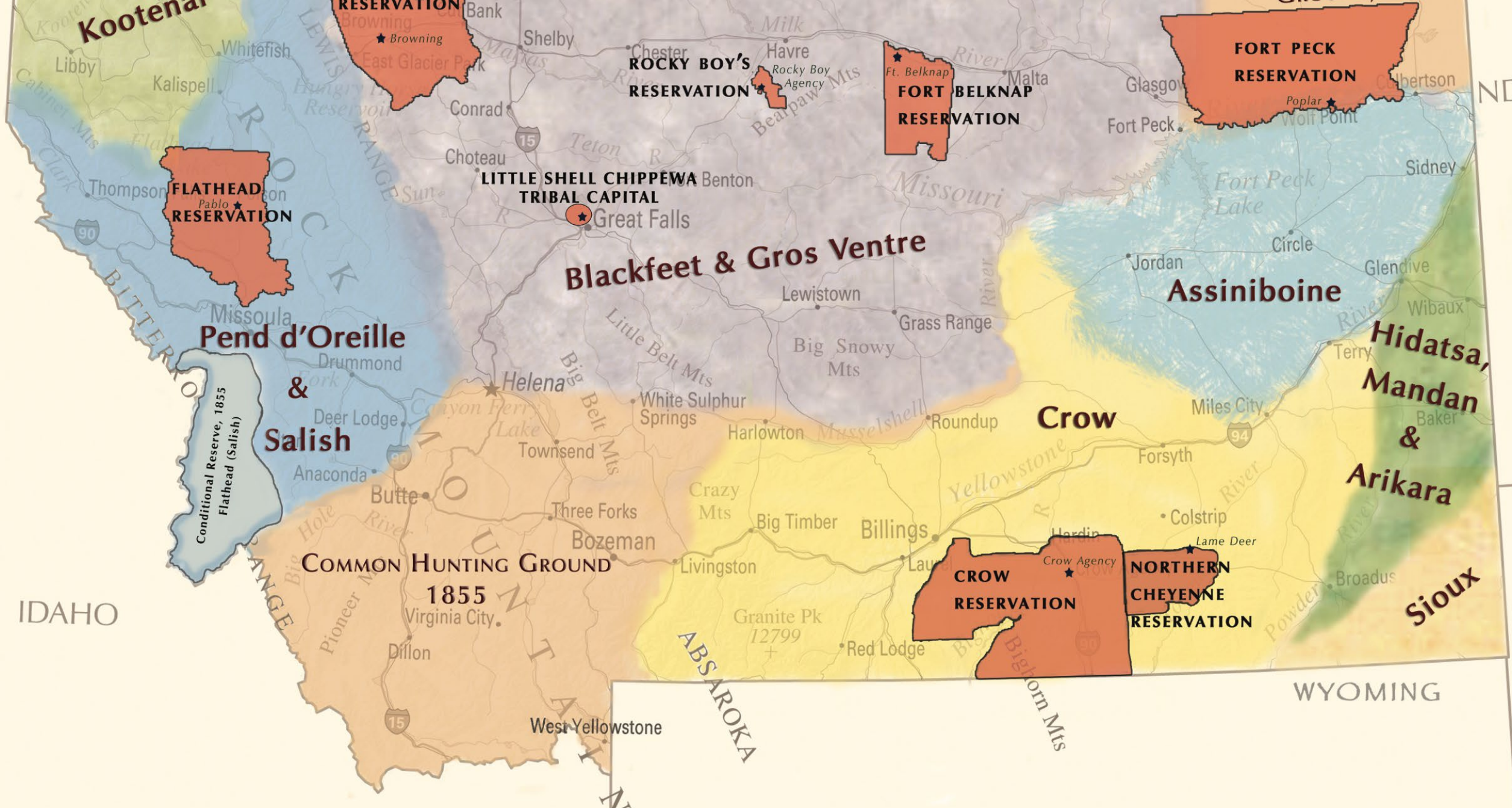
CHAP. 233.—An Act To authorize the Secretary of the Interior to issue certificates of citizenship to Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: *Provided,* That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.

Indians.
Born
States d
zens.
Proriso.
Tribal
fected.

Approved, June 2, 1924.

Snyder Act, June 2, 1924



Tribal Territories in Montana

History of Montana Voting Laws

- Territorial limits on voting: “white male citizens.”
- Enabling Act: “except as to Indians not taxed.”
- 1889 Constitution: male citizens of the United States 21 and older
- 1911 law: no resident of a reservation would be Montana resident
- 1937: voter registrars as “qualified, taxpaying” residents; all registrations cancelled; allowed cancellation upon challenge
- Taxpayer restriction remained in effect until 1975

Federal Voting Rights Act

- 1982 Amendments:
 - Results not intent: “less opportunity than other members of the electorate to participate...”
 - Factors: history, polarization, enhancement (majority groups), slates, legacy of past discrimination, racial appeals, diversity of office holders
 - Totality of circumstances

Windy Boy v. Big Horn County, 647 F.Supp. 1002 (D.Mont. 1986)

- Challenge to at-large voting for county commissioners and school board
- Second challenge (ever) by American Indians under Section 2 of VRA
- Court analyzed factors and, based on totality of the circumstances, found violation of the VRA
- “...this is precisely the kind of case where Congress intended that at-large systems be found to violate the [VRA].”
- Single member districts for county commission and school board
- Next election = first Native American Big Horn County commissioner

Multiple VRA cases

- Old Person - redistricting (prior to 2002);
- Matt v. Ronan School Board (at-large districts, agreement in 2000);
- U.S. v. Blaine County (at-large districts, plaintiffs won 2002);
- Alden v. Rosebud County (at-large districts, plaintiffs won 2000);
- U.S. v. Roosevelt County (at-large districts, 2000 consent decree).

Wandering Medicine v. McuCulloch, 906 F.Supp. 2d 1083 (D.Mont. 2012), vacated as moot by Ninth Circuit in 2013.

- VRA and Equal Protection challenge seeking injunction to force satellite election offices on reservation
- District Court denied injunction: “circumstantial evidence of discriminatory intent paled in comparison to the direct evidence that satellite locations were denied for logistical reasons.”
- After appeal, returned to District Court
- June 2014: Settlement reached that resulted in satellite locations on reservation two days per week during 30-day early voting period

Western Native Voice v. Stapleton, No. DV 20-0377 (13th JD, Yellowstone Cty.)

- Ballot Interference Prevention Act (BIPA):
 - No "knowing" collection of ballot unless "acquaintance, family member, caregiver, household member, postal service worker, or election official"
 - Unless the last two, no more than six ballots, must sign registry form
 - Fines/imprisonment
- Challenge to BIPA under constitution: right to vote, freedom of speech & association, and due process
- After trial, court determined that strict scrutiny standard applied and BIPA violated constitutional rights to vote, freedom of speech, and due process – permanently enjoined

Thank you!

Monte Mills

monte.mills@umontana.edu

(406)243-2544