



# NATIONAL CONGRESS OF AMERICAN INDIANS

May 3, 2012

The Honorable Lamar Smith  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
2138 Rayburn  
Washington, DC 20515

The Honorable John Conyers  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
B-351 Rayburn  
Washington, DC 20515

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*Tlingit*

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Dear Chairman Smith and Ranking Member Conyers:

The National Congress of American Indians (NCAI), the nation's oldest, largest, most representative national organization made up of Alaska Native and American Indian tribal governments, expresses its strong opposition to H.R. 4970, the Reauthorization of the Violence Against Women Act (VAWA).

H.R. 4970 fails to protect all victims. It weakens vital improvements contained in the bipartisan Save Native Women Act (H.R. 4154) and the recently passed bipartisan Senate VAWA bill (S. 1925), including provisions designed to address the needs of the LGBT community, immigrant victims, and—most critical to us—Native victims. The tribal provisions that were excluded from H.R. 4970 will address a longstanding jurisdictional gap on tribal lands with local solutions that deliver long-overdue justice to Native women and safety to tribal communities. These tribal provisions are essential to the safety of Native women, and NCAI cannot support any VAWA bill that leaves them out.

Federal gaps in jurisdiction have caused a crisis of domestic and sexual violence on Indian lands. Native women are raped and assaulted at 2.5 times the national average. The U.S. Department of Justice (DOJ) has found the current system of justice, “inadequate to stop the pattern of escalating violence against Native women.” Tribal leaders, police officers, and prosecutors have testified that violence that goes unaddressed—with beating after beating, each more severe than the last—all too often leads to death or severe physical injury. The VAWA tribal provisions would give tribes the tools they need to address these crimes in the early stages—before they escalate to serious assault and homicide.

We understand that two concerns have been raised regarding the tribal provisions: data and constitutionality. On the data, committee staff seem to rely on a report from the South Dakota Attorney General's office “Understanding Contextual Difference in American Indian Criminal Justice.” Upon analysis, this report supports our concern that domestic violence crimes committed by non-Indians are often unprosecuted. The DOJ statistics measure reported assaults. This paper compares that to prosecutions, and concludes that most of the defendants in South Dakota are Indians. That is our point – non-Indians commit many assaults on Indians, and they are not prosecuted. This is particularly true in South Dakota.

On constitutionality, you may have seen the letter from 50 law professors supporting the legislation's constitutionality. We would add only one point. At the time of the Constitution's framing, the Founders clearly understood as both a factual matter and as a legal matter that non-Indians who voluntarily lived among the Indians on tribal lands were subject to tribal law. This original understanding of tribal government status found within the Constitution is dispositive in our view, but is also supported by modern Supreme Court precedent.

We strongly oppose H.R. 4970 and urge all members of the Judiciary Committee to oppose it. We support the alternative House VAWA bills – H.R. 4982 or H.R. 4271 – with improvements, including those provisions in the bipartisan Senate bill that protect all victims from marginalized communities. Thank you for your consideration and please do not hesitate to contact me or Katy Jackman, Staff Attorney for NCAI at (202) 466-7767 if you have any questions or want additional information.

Sincerely,

A handwritten signature in cursive script that reads "Jacqueline Johnson Pata".

Jacqueline Johnson Pata  
Executive Director