



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SPO-16-037

TITLE: **Combatting Non-Indian Domestic Violence and Sexual Assault: A Call for a Full Oliphant Fix**

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, domestic violence in Indian country is at epidemic levels, including criminal acts by non-Indians against tribal members; and

WHEREAS, the 2013 Re-authorization of the Violence Against Women Act permitted tribes to exercise limited inherent criminal jurisdiction over non-Indian domestic violence perpetrators in narrow circumstances; and

WHEREAS, the experience of those tribes that have implemented non-Indian domestic violence jurisdiction has highlighted its limitations, particularly in light of certain United States Supreme Court cases including *Oliphant v. Suquamish*, which held that tribal governments have no criminal jurisdiction over non-Indians on tribal lands; and

WHEREAS, domestic violence is not a singular crime but can encompass any criminal activity including property crimes (e.g. malicious mischief, burglary, trespass, etc.), financial crimes (e.g., theft, intentional destruction of credit, etc.), drug crimes (e.g. involuntary drugging etc.), traffic crimes (e.g., drunk or drugged driving, reckless driving, particularly where the victim is an involuntary passenger), and personal crimes (e.g. assault, rape, reckless endangerment, kidnapping, unlawful imprisonment, etc.), and can be directed at third parties such as children, family members, boyfriends/girlfriends, or other persons the primary victims have relationships with; and

WHEREAS, it is impossible to craft a fix to the 2013 Violence Against Women Act non-Indian domestic violence provisions in a way that can encapsulate all potential domestic violence criminal acts and attendant crimes because domestic violence can take the form of virtually any direct or indirect crime against a spouse or intimate partner and is frequently accompanied by a pattern of criminal behavior such as drug crimes, theft, and violence that are damaging to the entire tribal community; and

WHEREAS, the 2013 Re-authorization of the Violence Against Women Act does not provide protections for stranger, acquaintance, or first date sexual assault or domestic violence related crimes; and

WHEREAS, the tribes that have implemented the non-Indian provisions of the 2013 Re-authorization of the Violence Against Women Act have proven that tribes can and do afford non-Indians the equivalent of all of their rights under the United States Constitution, complete with a right of review in federal court on a habeas corpus petition; and

WHEREAS, communities in which crimes occur are the best jurisdictions to investigate and prosecute those crimes regardless of who it involves; and

WHEREAS, tribal nations have a moral obligation to ensure the protection of their entire community regardless of race, citizenship, or relations to tribal citizens, which in turn mandates that tribes have the ability to hold all criminals accountable for crimes committed in their communities; and

WHEREAS, the United States government has the ability to restore tribal jurisdiction in a manner that ensures due process protections and allows for full local criminal justice protections by enhancing inherent tribal criminal jurisdiction over all crimes within a tribe's Indian country regardless of race, citizenship, or relationship of those committing crimes.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians does hereby call on the United States government to expand inherent tribal criminal jurisdiction over all persons committing any crime in their Indian country in a manner that ensures the defendants have the same due process protections as required under the Tribal Law and Order Act of 2010 and the 2013 Re-authorization of the Violence Against Women Act; and

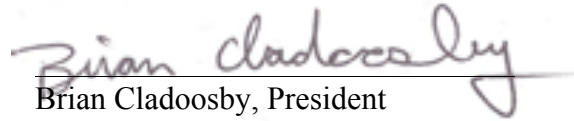
BE IT FURTHER RESOLVED, that, like the Tribal Law and Order Act of 2010 and the 2013 Re-authorization of the Violence Against Women Act, exercising such authority should be optional at a tribe's sole discretion; and

BE IT FURTHER RESOLVED, that NCAI does hereby call on all presidential campaigns to make the expansion of inherent tribal criminal jurisdiction over all persons and crimes within a tribe's Indian country a central part of their Native American policy; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2016 Midyear Session of the National Congress of American Indians, held at the Spokane Convention Center, June 27 to June 30, 2016, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary