S. 1925, THE VIOLENCE AGAINST WOMEN ACT REAUTHORIZATION
CONGRESSIONAL AUTHORITY TO PROTECT NATIVE WOMEN

S. 1925 will recognize and affirm tribal authority to prosecute misdemeanor cases of domestic violence by all offenders, regardless of race. This will prevent domestic violence from escalating, and begin to reverse the epidemic of violence against Native women.

**Violence against Native women has reached epidemic proportions.** Native women are 2.5 times more likely than other U.S. women to be battered or raped: 34% of Native women will be raped in their lifetimes and 39% will face domestic violence.

Like most of the U.S., interracial marriage and cohabitation of mixed races has played out in Indian country. In 1978, it may have been rare for a non-Indian to intermarry with an Indian. However, the U.S. Census Bureau recently reported that 50% of all Native American married women have non-Indian husbands, and thousands of other Native American women cohabit with, are divorced from, or share children in common with non-Indian men.

**Current law is inadequate to stop Reservation domestic and dating violence.** The DOJ has found the current system of justice, in which tribal governments have no authority over non-Indians, “inadequate to stop the pattern of escalating violence against Native women.” In many cases, the federal government has exclusive responsibility to investigate and prosecute major and minor on-reservation crimes committed by non-Indians. Federal law-enforcement resources are often far away and stretched thin.

The race-based limits that exist under current law deny Native victims equal access to justice. S. 1925 provides that justice by addressing domestic violence at the local tribal level in the early stages, before violence escalates to aggravated assault and homicide.

**The U.S. Supreme Court has approved similar congressional affirmations of “inherent tribal power”.** The Court in *U.S. v. Lara* (2004) found that Congress has the authority to “recognize and affirm” the “inherent” authority of an Indian tribe. The Court held that the Constitution confers on Congress plenary power to enact legislation to limit and relax restrictions on tribal sovereign authority.

The legislation at issue in *Lara* was an amendment to the Indian Civil Rights Act (ICRA) that “recognized and affirmed” the “inherent” criminal authority of Indian tribes over non-member Indians (Indians from a different tribe). In upholding congressional authority, the Court reasoned that the law did not interfere with State authority.

**S. 1925 affirms carefully tailored and limited authority over non-Indians.** Like the ICRA amendment at issue in Lara, no power is taken from the federal or state governments. Tribal power will be concurrent. S. 1925 limits tribal authority to crimes of domestic and dating violence, and requires that tribal courts provide full U.S. Constitutional protections to suspects of domestic abuse. Suspects and those convicted of domestic abuse may petition federal courts to challenge the legality of their detention or conviction.

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