Central Council
Tlingit and Haida
Indian Tribes of Alaska

CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
Tribal Court
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CENTRAL COUNCIL OF TLINGIT & HAIDA INDIAN TRIBES OF ALASKA
TRIBAL JUDICIARY COMMITTEE

April 24, 2012

Honorable Lisa Murkowski
709 Hart Senate Building
Washington D.C. 20510

Honorable Mark Begich
111 Russell Senate Office Building
Washington, D.C. 20510

Honorable Don Young
2314 Rayburn House Office Building
Washington, D.C. 20515

RE: Violence Against Women Act Re-Authorization, Alaska-Specific Amendments

Dear Senator Murkowski, Senator Begich, and Congressman Young:

First, we want to thank you and your staff for working with us on the removal of the Alaska-specific exclusion of Indian tribal governments from the tribal protective order provisions of the Violence Against Women Act Re-Authorization (VAWA).

We have been closely examining the original VAWA, Senate Bill 1925, and the language proposed by Senator Murkowski to address the singular exclusion of Alaska's tribes from the civil jurisdiction to issue and enforce Domestic Violence Protection Orders under the VAWA.

First, it is essential to understand that we are coming not from a place of contention, but with a core concern for the safety of our women, children, and families. In pursuit of all available service to this end, the Central Council of Tlingit and Haida Indian Tribes of Alaska recently wrote and received a three (3) year, $880,000 Tribal Justice Grant from the U.S. Department of Justice to build a Family Safety Court to address family violence and abuse in the communities we serve. Obviously, the outcome of this 'Alaska fix' will greatly impact our ability to move forward and service our People in this critical area affecting our present and future.

The key tribal need in this legislation is as follows:

- A Tribal Court in Alaska needs to have the authority to issue civil protective orders entitled to 'Full Faith and Credit' recognition by any State, Tribe, and Law Enforcement Agencies in common and on equal footing with other Native American Tribal Courts in the Continental United States. Women need to have all choices and venues available to them when seeking safety.

The present 'Alaska fix' to S.1925's explicit exclusion of Alaska's tribes does not uphold this need, because it unnecessarily singles out Alaska Natives (and other American Indians residing in Alaska), and creates a separate class of people in national legislation. No other group of women, and no other Native American group are singled out by name for separate treatment; this particularized 'savings clause' begs adversity and creates a legal cloud of doubt around the authority of Alaska's tribes to issue protective orders, on par with every other government in the United States.

Our concern is not purely academic, or a matter of semantics, adversity has already dominated Alaska's state and federal court rooms, as the State of Alaska has sought to litigate every iota of tribal authority to address our essential areas of Indian Child Welfare, Child Support, Paternity, and Adoptions. After decades of litigation and literally millions of dollars wasted, the State's arguments have been found without merit; time and again the courts have held that Alaska Native Tribal Governments have the same inherent authority as Native American tribes nationwide to adjudicate these essential domestic relationships.[1] The inherent authority of Native Americans to regulate their domestic relationships has never been contingent on the presence or absence of Indian Country.[2]

To this end, Alaska has been included on equal footing in every other piece of major federal legislation affecting Native families (e.g. Indian Child Welfare Act, Adoption and Safe Families Act, Uniform Interstate Family and Support Act). Our concern regarding the 'Alaska Savings Clause' is that the Alaska Delegation is seeking to uniquely limit the inherent authority of Alaska's tribes, unwittingly causing great harm to our ability to protect our women, children, and families.

The 'Alaska Savings Clause' is not necessary from a legal standpoint, and so its result is to create a cloud of ambiguity if not doubt about Alaska's tribes authority to issue protective orders entitled to full faith and credit under VAWA. It is incumbent upon Federal Legislators to write laws clearly so as not to create a launching pad for further wasteful litigation, and a delay of justice for all Alaskans.

Accordingly, we offer the present language of the Alaska provisions, with our changes indicated by brackets and strikethrough:

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[1] *See* U.S. CONSTITUTION, Article I, Section 8 (Indian Commerce Clause), United States v. Wheeler, 435 U.S. 313 (1978), United States v. Quiver, 241 U.S. 602 (1916).

[2] John v. Baker, 982 P.2d 738 (Alaska 1999); Kaltag Tribal Council v. State of Alaska (DHSS Commissioner Jackson), 344 Fed. Appx. 324 (9th Cir. 2009), *cert. denied*, 131 S. Ct. 66 (October 2010); State of Alaska v. Native Village of Tanana, 249 P.3d 734 (Alaska 2011).

SEC. 905. TRIBAL PROTECTION ORDERS.

(a) IN GENERAL. – Section 2265 of title 18,1 United States Code, is amended by striking subsection (e) and inserting the following:

"(e) TRIBAL COURT JURISDICTION.- For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising [~~anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise~~] within the authority of the Indian tribe."

(b) [~~APPLICABILITY. Nothing in this Act, including an amendment made by this Act, alters or modifies the jurisdiction or authority of any Indian tribe in the State of Alaska under section 2265(e) of title 18, United States Code (as in effect on the day before the date of enactment of this Act).~~]

[~~**SEC. 910. LIMITATION.**~~

~~Nothing in this Act or an amendment made by this Act limits, alters, expands, or diminishes the civil or criminal jurisdiction of the State of Alaska, any subdivision of the State of Alaska, or any Indian tribe in the State of Alaska.~~]

By allowing the VAWA to be applied on equal footing with every other court in our Country, Alaska's women will have more choices of venue for family safety, not less. It is time for the State of Alaska and the Alaska Tribes to work cooperatively (as is done in all other 49 states) to establish processes to meet the needs of Native and non-Native people alike, in a matter that protects the sovereignty of the respective governments and assures due process and equal protection of the law for all citizens.

We thank you in advance for your consideration.

Sincerely,

Robert W. Loescher
Tribal Judiciary Committee

cc: Central Council of Tlingit & Haida Indian Tribes Executive Council
Alaska Federation of Natives
National Congress of American Indians