

Fact Sheet

CERA FACTS · OPINIONS

DEBATE · TESTIMONIALS

Imagine Living in a Country:

- Where there is no guarantee of a representative and republican form of government.
- Where residents are excluded from voting and running for office because of their ethnic background.
- Where there is taxation without representation.
- Where some residents can impose civil and criminal laws on their neighbors who have no voice in government.
- Where you can be arrested, tried and jailed by a government not bound by the U.S. Constitution.
- Where no resident is protected by the Bill of Rights.

This is U.S. Senator Inouye's Vision for "Indian Country":

Fact: Senate Bill 578, introduced March 7, 2003, by Senator Inouye, would make several million U.S. citizens who are non-members of the tribe subject to the civil, taxing and criminal authority of tribal governments.

Fact: Because of U.S. policies, one half of the people living on Reservations are not members of that Indian tribe or band.

Fact: More non-Indians than Indians live on the Reservations in 15 states.

Fact: Two thirds of the land in original Reservations is owned by non-Indians.

Fact: Senate Bill 578 would take away the constitutional rights of several million Americans and create an additional 550 "states" equal to our 50 states but unrestrained by the Constitution and Bill of Rights.

One Country – the United States of America

All Americans, Indian and non-Indian, are entitled to Full Constitutional Protection, including the Bill of Rights. Write, call and e-mail your Senator, Congressperson and Governor. Say NO to Senate Bill 578 and Senator's Inouye's attempt to erase the constitutional rights of United States citizens.

For more information contact: Citizen's Equal Rights Alliance, Inc.
www.citizensalliance.org

CERA's Mission Statement

Federal policies currently deny millions of people living on or near Indian reservations their full constitutional rights. It is therefore CERA's mission to advocate equal protection of the law so that this nation of many cultures may be one people, living under one system of laws.



www.citizensalliance.org

Senate Bill 578 Will Strip Several Million U.S. Citizens of their Constitutional Protections

Taking advantage of the current political climate's concern with Homeland Security, tribal governments have introduced an amendment to the Homeland Security Act of 2002 that would subject all persons who live on or travel through tribal reservations to the criminal, civil and taxing authority of tribal government. Senate Bill 578, introduced by Senator Inouye, seeks to reverse numerous decisions of the United States Supreme Court governing the nature and extent of tribal sovereignty, the nature and extent of tribal jurisdiction over non-members, tribal taxation authority, and the reach and power of tribal courts. Among the decisions this would reverse are *Atkinson v. Shirley*, *Bourland v. Yankton Sioux Tribe*, *Strate v. A-1 Contractors*, *Montana v. United States*, *Oliphant v. Suquamish Indian Tribe*, and *Nevada v. Hicks*. Here's how Senate Bill 578 would work:

(a) Section 13(a) declares that tribes have "inherent sovereign authority" to "adjudicate... criminal, civil and regulatory laws committed by any person on lands under the jurisdiction of Indian tribal government." This provision would reverse the United States Supreme Court decisions in *Bourland*, *Montana*, *Strate*, and *Hicks* that hold that tribes lack "inherent sovereign authority" over non-Indians and non-Indian lands.

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(b) Section 13(b)(2)(A) provides that the scope of this authority over land would be "all places and persons within the Indian Country" as defined in §1151, Title 18 of the United States Code. That section defines "Indian Country" as all lands within the exterior of boundaries of the reservation, whether or not the lands are in private land ownership and including roads crossing reservations. All lands and all persons who live on or travel through reservation areas would be subject to tribal government control.

(c) Tribal jurisdiction would extend outside the boundaries of a reservation under §13(b)(2)(B) if a person had "sufficient contacts with the land or a member of the Indian tribal government" to allow them to be brought into tribal court. This is similar to the "minimum contacts test" under *International Shoe* that determines whether or not you can be subject to suit in a particular state where you do not reside. For example, if you sold goods to tribal members, the argument could be made that you could be required to appear in tribal court, even though your place of business was outside the reservation.

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Senate Bill 578 subjects several million American citizens to laws and regulations passed by a government in which they cannot participate. This Bill subjects citizens to trial in courts where they are not protected by the Bill of Rights or the Constitution of the United States. There is no right of appeal to federal courts, and those tribal courts are often claimed to deny their

own members fair hearings. This is a frightening effort to carve out areas within the United States in which the Constitution and the Bill of Rights do not protect all citizens. Indian people today cry out against the abuses, the lack of representative government, the lack of economic protection, and the arbitrary way they are treated by tribal governments. Indian people have no protection under the Bill of Rights or the United States Constitution for actions by their tribal government, and no access to federal courts to remedy those wrongs. This Bill would subject over 400,000 citizens who are not members of the tribe to those same tribal taxation, regulation and criminal authorities.

Lest anyone believe that this is a misinterpretation of the intent of the Bill or its authors, the words of Senator Inouye clearly detail the intent and reach. First, he attempts to attach this tribal government wish list onto the Homeland Security Bill because it presents an opportunity for passage because it cannot stand on its own "Homeland Security presents an opportunity to secure a status under federal law that will... recognize your powers... as sovereign governments [and] your status in the family of governments that make up the United States." Senator Inouye stated that "[Tribal governments] should be as sovereign as any state in the Union." We will not have 50 states, but an additional 550 tribal "states" not subject to the United States Constitution.

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The introductory language to Senate Bill 578 states that tribes have the "inherent authority" to create "their own form of government." There is no guarantee that tribes need be democratic nor have independent branches of government. Our founding fathers

recognized that the concentration of all government power in a single body, judicial, legislative and executive, was the very definition of tyranny. Unfortunately, in most tribal governments, all governmental power is concentrated in a single "tribal council." All too often, when those tribal councils create a judicial system, there is no guarantee of the independence of the judges. The judiciary can be created and controlled by the tribal council who protects itself from being brought before that same judicial system.

Senator Inouye stated that the Amendment to the Homeland Security Bill "allows the tribes to exercise as much authority as they choose." The stated goal of the authors of this legislation is to overturn Supreme Court rulings that non-members are not subject to the taxing authority, to the civil and criminal laws, and to courts

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created by tribal governments. We are at a time in our history when the Indian people are crying out for someone to hear their pleas that they be afforded the full range of constitutional rights and protections offered all other citizens. Instead, Senate Bill 578 represents an effort to reward unaccountable tribal governments with power over more American citizens.

Nowhere does this Bill provide that the values inherent in our Constitution, values that we have promoted across the world, be applied to tribal government. The Declaration of Independence recognizes that the just power of government springs only from the consent of the governed. That concept is denied by Senate Bill 578. American citizens would not be pro-

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tected by the United States Constitution and its Bill of Rights in dealing with tribal governments. There is no guarantee of representative government even for tribal members.

Senate Bill 578 allows legislation and taxation without representation, the core issues that led to the American Revolution and the establishment of the United States

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Constitution. This is an unconstitutional attempt to subvert our system of federalism. That system provides a place for federal and state governments, each with their individual spheres of power.

Senate Bill 578 denies citizens their Tenth Amendment right that all powers not granted to the federal government are reserved to the state and to the people. This Bill would create, in 550 tribal governments, power

and jurisdiction over anyone that came within the boundaries of Indian Country, and subject them to a tribal government who could tax and prosecute them. Non-members would have no right to participate by voting and holding office. The United States government has a history of making grave errors that have denied its citizens their civil and constitutional rights during time of war. It is no understatement to claim that this Bill represents a similar challenge during this time of a war on terrorism.

For more information contact:
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Visit our Growing Website! www.citizensalliance.org

CERF's website is a growing, valuable resource for anyone interested in studying or writing about federal Indian policy. We have just added important information on the history, status and abuses of Indian Courts. The history of Indian policy is often amazing, and the development of Indian courts provides a way to see the confusing, contradictory and often accidental development of that policy.

A link to the treaties between Indian tribes and the U.S. government is provided along with links to most recent, related Supreme Court decisions. Links in the "Legal Issues" make it easy to visit websites of the Library of Congress, look up court cases, visit the Dept of Interior and the BIA, look

up the U.S. Code and federal regulations, search the federal registry, track federal legislation and many other things. The website contains a series of important articles and information in the section on "Sovereignty" that you won't find anywhere else.

The website also has information and links to many other local groups that are interested in similar issues. Past articles and issues from our newspaper are available online. Reviews and information about a group of valuable books is provided and news items are accessible. Much of this information isn't available anywhere else – take advantage of it.

Senators Campbell, Inouye and Cantwell Choose to Ignore Rule of Law

Reprinted letter to the editor from the Bellingham Herald, Washington April 1, 2003

There is a recent trend in the United States toward ignoring the rule of law, which is the foundation of any free society. By ignoring the rule of law, we are placing this country under attack from within. Senators Ben Nighthorse Campbell along with Daniel Inouye, and our very own Maria Cantwell are at the center of one such attack. They are sponsors of Bill S. 578. The goal of this bill is to overturn the decisions of the U.S. Supreme Court and thereby cut at the fabric of the American Constitution. This bill will place all people, tourists, non-member residents and all elected officials under the jurisdiction of the tribal government within any reservation. Our Supreme Court has continued to state that tribal self-government is just what it says, tribal governance over tribal people.

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Without question, Inouye, Cantwell, Nighthorse Campbell and have shown a rather dark contempt of this nation through support of legislation that strips away the Constitutional guarantee of a “republican” form of government for all U.S. citizens.

Last month, the Bureau of Indian Affairs was forced to take over the tribal police department on the Blackfeet Indian Reservation because as one B.I.A. official was quoted as saying, “We need to protect the citizens.” If protecting our

citizens and upholding the rule of law is not an oath that our Congressional representatives can support, then why are they representing the citizens?

*Marlene Dawson,
Ferndale, Washington*

Bill Threatens Area Citizens’ Rights

by Darrel Smith
Mobridge, South Dakota

A Breathtaking Example of Racial Tyranny: A bill in the U.S. Senate (S. 578) threatens my fundamental rights as an American citizen.

This bill would give the most powerful tribal factions the “inherent” independent supremacy to establish whatever form of government, constitution and court system they chose. It subjects everyone on the reservation (plus “any person, activity or event having sufficient contacts” with the reservation or a tribal member) to the criminal and civil laws of whatever “form of government” tribes chose.

Participation in tribal government is limited to Indians whose parents were tribal members. Thus, as a non-member, I would not have a right to vote or participate in the government that makes, judges and enforces the laws and taxes that would control my family, property, business and community.

Thus, as a non-member, I would not have a right to vote or participate in the government that makes, judges and enforces the laws and taxes that would control my family, property, business and community.

The U.S. Constitution, its Bill of Rights and its Fourteenth Amendment equal protections do not bind tribal governments.

Tribes are also protected from legal challenges by their “sovereign immunity”. They can, and do, legally discriminate.

Tribal governments would apparently replace or control state and other local governments in reservations, including in Corson, Dewey, Ziebach and Sioux counties in this area.

This bill is not the passing thought of some rogue senator. The tribal establishment, including the National Congress of American Indians (NCAI), Native American Rights Fund (NARF), tribal chairmen and their attorneys have been planning and meeting for over a year to formulate and introduce this legislation.

Senators Campbell and Inouye, the chairmen and ranking minority member, of the Senate Indian Affairs Committee sponsored the bill. It has the impressive political support of the national tribal establishment with their casino-enriched campaign and lobbying millions.

This bill directly threatens me and millions of other non-members who live on and near reservations and anyone having “sufficient contacts” with the reservation or a tribal member. It would annul my right to vote and terminate my constitutional protections. It threatens my family, destroys my property values and disrupts my community.

Can you think of a more breathtaking example of racial tyranny in this county?