

Citizens Equal Rights Alliance

MANY CULTURES



ONE PEOPLE . . ONE LAW

April 15, 2003

The Honorable Norman Coleman
United States Senator
2550 University Ave. West, Suite 100N
St. Paul, MN 55114

Re: Senate Bill 578

Dear Senator Coleman:

I am writing because there is a bill before the United States Congress that would subject several million citizens who are not tribal members, but who live near and on tribal reservations, to the criminal, civil and taxing authority of tribal government. S. 578, introduced by Senators Inouye and Campbell, would 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 many decisions that would be reversed 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*. By casting this Bill as an amendment to the Homeland Security Act of 2002, the sponsors seek to take advantage of the current political climate's concern with homeland security.

Here are some of the key provisions of S. 578:

- (a) The Bill would recognize the right of tribal governments to create their own form of government. While a nod to tribal sovereignty, this means that tribal governments would not have to be structured in a democratic or republican form. Judicial systems do not need to be independent. If the tribe decided upon an inherited chieftain system, that would be the tribe's business. This becomes the business of everyone else, however, when other provisions of S. 578 would subject non-members to tribal government jurisdiction.
- (b) Section 13(a) states that tribes have "inherent sovereign authority" to "adjudicate criminal, civil and regulatory" matters over "any person" on "lands under the jurisdiction of Indian tribal government." This would reverse the United States Supreme Court decisions in *Bourland*, *Montana*, *Strate*, *Hicks* and *Oliphant* that hold that tribes lack "inherent sovereign authority" over non-Indians and non-Indian lands, and specifically lack any criminal jurisdiction over non-Indians. Remember that tribes are not subject to the Bill of Rights or the United States Constitution.
- (c) Section 13(b)(2)(A) would give tribes authority over "all places and persons within Indian Country." The bill defines "Indian Country" as all lands within the exterior boundaries of the reservation, whether or not the lands are in private ownership and including public highways crossing the reservations. When you understand that 2/3 of the land in original reservations is owned by non-Indians, and 1/2 of the people living on reservations are not members of that tribe or band, this provision would make a person subject to tribal jurisdiction because of where they live, even though the person could not participate in tribal government. This is contrary to the Declaration of Independence that recognized that the just powers of government flow from the consent of the governed. This would make persons subject to taxation without representation.

- (d) Tribal jurisdiction would extend outside the boundaries of a reservation under Section 13(b)(2)(B) if a person had “sufficient contacts with the land or a member of Indian tribal government” to allow them to be haled into tribal court. For example, if a person outside the reservation sold goods to tribal government, arguably they could be brought into tribal court.

The bottom line is that S. 578 would subject several million American citizens, who are not tribal members, to laws and taxes passed by a government in which they cannot participate. By doing so, these citizens would be subjected to tribal government in which they are not protected by the Bill of Rights or the Constitution of the United States. There would be no right to appeal to Federal Courts, even though tribal courts are often accused of denying their own members fair hearings because of the lack of an independent judiciary.

At a time when the Indian people themselves 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, this is a frightening effort to subject non-members to the power and control of tribal government.

This analysis does not misinterpret the intent of the Bill or its authors. Senator Inouye states that “[Tribal governments] should be as sovereign as any state in the union.” The effect of S. 578 would be to create an additional 550 tribal “states” not subject to the United States Constitution. Senator Inouye states that this Bill “allows tribes to exercise as much authority as they choose.” Clearly this Bill is an unconstitutional attempt to strip several million of United States citizens of their basic rights under the United States Constitution, including the right to participate in government through voting and holding elective office.

Nowhere does S. 578 require that the values inherent in our Constitution, values that we have and are promoting across the world, be applied to tribal government. There is no guarantee of representative government, of democratic government, even for tribal members. 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. S. 578 denies citizens their 10th Amendment right that all powers not granted to the federal government are reserved to the state and to the people.

The United States government has an unfortunate history of making errors that have denied its citizens their civil and constitutional rights during a time of war. It is no understatement to claim that this Bill represents a similar challenge during this time of the war on terrorism. We ask your support in opposing S. 578.

Citizens Equal Rights Alliance, Inc.



Elaine Willman
Chairman

Enclosures:
CERA Fact Sheet

Copies to:
The President
The Congress
The Secretaries of the Administration
The Governors and Attorney Generals of the Fifty States
The Media