

AMENDMENT -- To reaffirm the inalienable rights of every American citizen guaranteed by the Constitution of the United States.

This legislation allows, for the first time, a tribal court to have jurisdiction over a non-Indian who commits a domestic violence crime in Indian country or against an Indian. The language explicitly provides that the self-governance of a tribe includes the right “to exercise special domestic violence criminal jurisdiction over all persons.” To my knowledge, this is the first time the federal government has given Indian courts jurisdiction over “all persons.”

While I recognize that domestic violence is a serious problem in Indian country, this language is troublesome for several reasons, and should be removed.

Indian courts are not bound by the United States Constitution. As a result, the Bill of Rights does not apply in Indian courts; instead, most of the protections are preserved because of the Indian Civil Rights Act, but it does not preserve all rights. For example, the Indian Civil Rights Act only guarantees the right to counsel at an individual’s own expense.

The underlying bill does include language that says: “In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant...all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant.”

I am certain, however, that this is not enough. For instance, tribal courts will be hard-pressed to meet the Constitutional right to be tried by a jury of one’s peers if they do not have the authority to compel non-Indians to serve on juries.

I think we must also ask an important question: **if we are to give tribes special jurisdiction over these types of crimes, why not other crimes?** One grant of tribal jurisdiction over criminal law begets another, and soon we may find two separate criminal codes: one for tribal lands and victims, and one for all other crimes. This bill sets dangerous precedent, and we must recognize the problems that will ensue.

Finally, this language causes particular problems in Oklahoma. Oklahoma has no reservations, but it does have 39 separate Indian governments. The individual allotment lands and trust lands are small and dispersed within OK communities and counties. The tribes do not have large continuous land bases, and because of its unique history, many Oklahomans claim Indian enrollment, but have no relationship to the tribe or a tribal community. **Simply put, the opportunities for abuse of this provision are myriad in Oklahoma, and I find this to be completely unacceptable.**

Proponents of this provision argue that it is necessary because no one is prosecuting non-Indian offenders, and that may be true in some cases. But instead of creating a conflict between Indian country and the federal government's jurisdiction over American citizens who commit specific crimes, I believe we should be dealing with the bigger problem by holding the Department of Justice and local U.S. Attorneys accountable for not prosecuting these cases. I would be happy to support legislation that seeks to accomplish that goal, but I cannot support the language included in S. 47.