HONORABLE TROY A. EID AND THOMAS B. HEFFELFINGER
Former United States Attorneys
1200 17th Street, Suite 2400
Denver, CO 80202

April 30, 2012

Dear Representative:

We respectfully urge you to support H.R. 4154, the Stand Against Violence and Empower Native Women Act, and its inclusion in the House version of the Violence Against Women Reauthorization Act (VAWA). H.R. 4154 contains amendments to Title IX of VAWA – the Safety for Indian Women title – that are critical to the safety of Native women. Our experience as former United States Attorneys, appointed by Republican Presidents, prompts us to speak out on the need for these amendments and to correct some misconceptions about them.

First, the need: H.R. 4154 is fundamentally about respecting the power of local governments to be more accountable and responsive to the communities they serve. Given the alarmingly high rates of domestic violence and abuse in much of Indian County, it is senseless -- if not unconscionable -- to deprive Native American communities of the basic legal tools needed to protect their most vulnerable citizens. Tribal governments need and deserve the right to prevent, prosecute and punish crimes on their lands so long as they respect defendants' federal constitutional rights.

H.R. 4154 is a critical first step in bringing balance to a status quo that badly distorts fundamental notions of criminal justice and fairness on many Indian reservations. Simply put, criminals should no longer evade justice in this country simply because of their racial or ethnic status, and because they happen to commit crimes on Indian reservations that are otherwise subject to exclusive federal jurisdiction.

In seeking your support, it is important that we also address three misconceptions about this bill.

First, Congress' power to determine the jurisdiction of Indian tribes and nations within our federal constitutional system has been well-settled as a matter of U.S. Supreme Court law for more than a century. This includes Congress' authority to provide greater flexibility to tribal governments in asserting their own concurrent jurisdiction to combat domestic violence. H.R. 4154 is merely the latest example of Congress' time-honored ability to define and regulate the appropriate scope of Indian Country criminal and civil jurisdiction.

Second, H.R. 4154 certainly does not unfairly prejudice the rights of non-Indian criminal defendants. The Indian Civil Rights Act already provides the requisite legal protections, including the issuance of a writ of *habeas corpus*, should any tribal government allegedly violate defendants' protected federal constitutional rights.

Finally, while the impact on the federal court system should be closely monitored as H.R. 4154 is implemented, it is unreasonable to expect the federal courts to be clogged with habeas petitions as a result of this bill. In practice, it will probably take considerable time for many Native American governments to implement this enhanced authority should they choose to do so. Some may forgo this option entirely. Yet even those tribes that are prepared to move forward to implement H.R. 4154 are limited in size and scope given overall federal caseloads. These tribes can reasonably be expected – based on our ongoing experience with the implementation of the enhanced tribal sentencing provisions of the Tribal Law and Order Act ("TLOA") – to proceed very cautiously. As a practical reality, the last thing Indian tribes want is to encourage federal court review that eviscerates the enhanced authority this bill provides.

Our experience with TLOA is that tribes are working diligently to "get it right" in the event of federal judicial review by protecting non-Indian defendants' federal constitutional rights. Tribes that are currently seeking to impose longer sentences under TLOA have been strengthening their courts' capabilities when and as needed to ensure that judges, prosecutors and public defenders have the same quality of training and credentials as their state and federal counterparts, and to safeguard judicial independence. The same result can reasonably be expected as H.R. 4154 is implemented.

In sum, H.R. 4154 recognizes that while many federally recognized tribes may choose not to expand their criminal jurisdiction in the foreseeable future, those that are ready -- and that fully protect defendants' federal constitutional rights -- should be provided the opportunity to do so in domestic violence cases. Such cases strike at the very heart of the cycle of the violence that claims far too many lives in Indian Country. H.R. 4154 will help these tribal communities break this cycle.

The key provisions of H.R. 4154 are in S.1925, the VAWA Reauthorization bill passed by the Senate on April 26, 2012 with broad bipartisan support. There are three VAWA Reauthorization bills currently pending in the House: H.R. 4271, H.R. 4982, and H.R. 4970. We respectfully urge you to support inclusion of marker bill H.R. 4154 in these larger bills.

Americans everywhere expect that local public safety institutions – those that are closer and more accountable to their communities – are best-positioned to protect their citizens and promote equal justice for all. This bill will help Indian tribes and nations help themselves. It is a critical step forward on a journey toward a more Perfect Union in which all Americans can be safe and secure in their own communities.

Thank you very much for your consideration.

Sincerely,

TROY A. EID
Chairman, Indian Law and Order Commission
Former United States Attorney
for the District of Colorado

THOMAS B. HEFFELFINGER
Former United States Attorney
for the District of Minnesota