NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Juana Majel Dixon
Pauma Band of Mission Indians

RECORDING SECRETARY
Edward Thomas
Central Council of Tlingit & Haida Indian Tribes of Alaska

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Bill Martin
Central Council of Tlingit & Haida Indian Tribes of Alaska

EASTERN OKLAHOMA
S. Joe Crittenden
Cherokee Nation

GREAT PLAINS
Robert Shepherd
Sisseton Wahpeton

MIDWEST
Matthew Wesaw
Pokagon Band of Potawatomi

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Fawn Sharp
Quinault Indian Nation

PACIFIC
Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN
Scott Russell
Crow Tribe

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Robert Tippeconnie
Comanche Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh

WESTERN
Ned Norris, Jr
Tohono O'odham Nation

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

May 15, 2012

Rep. John A. Boehner
Speaker
U.S. House of Representatives
Longworth House Office Building, Room 1011
Independence and New Jersey Avenues, SE
Washington, DC 20515

Rep. Nancy Pelosi
Minority Leader
U.S. House of Representatives
Cannon House Office Building, Room: 235
1st and Independence Ave., S.E.
Washington, DC 20515

Dear Speaker Boehner and Minority Leader Pelosi,

On behalf of the National Congress of American Indians, the oldest, largest, most representative national organization made up of Alaska Native and American Indian tribal governments, I write to express our strong opposition to H.R. 4970, the Violence Against Women Reauthorization Act (VAWA) currently pending in the House because it excludes key tribal provisions contained in H.R. 4154, the bipartisan Stand Against Violence & Empower Native Women Act (SAVE Act), as well as the bipartisan Senate VAWA bill, S.1925. These tribal provisions are essential to the safety of Native women, and NCAI cannot support any VAWA bill that leaves them out. Moreover, as amended in the House Rules Committee, H.R. 4970 includes a dangerous new provision that has the potential to further undermine the safety and autonomy of victims in Indian Country.

Federal gaps in jurisdiction have caused a crisis of domestic and sexual violence on Indian lands. Native women are raped and assaulted at 2.5 times the national average, and studies show that the majority of the perpetrators are non-Indian. The U.S. Department of Justice (DOJ) has found the current system of justice, "inadequate to stop the pattern of escalating violence against Native women." Tribal leaders, police officers, and prosecutors have testified that violence that goes unaddressed—with beating after beating, each more severe than the last—all too often leads to death or severe physical injury. Rather than giving tribes the tools they need to address these crimes at the local level in the early stages, H.R. 4970 forces tribal residents to rely on federal law enforcement—often located hundreds of miles from the reservation and scene of the crime—to protect victims.

We are opposed to Section 1006 of the bill, which would authorize Indian victims of domestic violence or Indian tribes on behalf of Indian victims to seek protection orders from U.S. district courts against suspects of abuse. If a federal court grants an order of protection, violation of that order will constitute a federal crime. This measure does nothing to address the crux of the issue—a lack of local authority to handle misdemeanor level domestic and dating violence when the perpetrator is non-

Indian—and is drafted in a way that undermines the safety and autonomy of victims. Neither Section 1006 nor the underlying bill empower the governmental authorities closest to the alleged criminal activity—tribal police and courts—to intervene early in acts of domestic violence committed by non-Indians within the tribe's territory. Instead, this bill would preserve an ineffective status quo in which federal law enforcement (or state law enforcement in PL280 states), again located hundreds of miles from the reservation, are primarily responsible for protecting Native women. Neither federal nor state authorities will ever have the resources, time, or will to address misdemeanor crimes on the reservations. They simply have no stake in or ties to the relevant tribal communities.

Second, Section 1006 either places the burden on the Indian victim to travel to federal court or empowers the tribe to do so on behalf of the victim—potentially without her consent. Reservation victims are often not in the position to hire legal counsel or travel hundreds of miles to the federal court to petition for the protection order. Fortunately, under current law, they do not need to. Tribal courts currently have civil authority to issue and enforce protection orders against both Indians and non-Indians. Thanks to the full faith and credit provision of VAWA (18 U.S.C. 2265), every jurisdiction in the country is required to recognize and enforce these tribal protection orders. A victim of domestic violence on tribal lands is currently able to secure a legally valid protection order without traveling off the reservation and navigating a foreign court system.

Section 1006 would allow tribal governments to seek a protection order from the federal government regardless of the wishes of the victims. This runs contrary to one of the foundational principles of VAWA, which has always encouraged and supported victim-centered responses that help restore autonomy and control to battered women. VAWA recognizes that domestic violence victims are in the best position to know when it is safe for them to leave and what steps should be taken, including when to seek a protection order. Moreover, H.R. 4970 requires the tribe to disclose the address of the victim, which could place her in jeopardy if she is in hiding.

Third, Section 1006 essentially adds another crime—violations of federal court orders of protection—to the list of crimes that statistics show federal authorities are already not adequately prosecuting. VAWA 2005 recognizes that the U.S. has a federal trust responsibility to assist tribes in safeguarding the lives of Indian women. Yet, despite the federal government's primary enforcement responsibility on Indian reservations, between 2005 and 2007: U.S. Attorneys declined to prosecute nearly 52% of violent crimes that occur in Indian country; and 67% of cases declined were sexual assaults. In fact, federal authorities currently have the ability to prosecute many violations of protection orders occurring on Indian lands. Adding more crimes to the list of those that federal authorities are responsible for prosecuting in Indian country will not change the fact that federal prosecutors have neither the resources nor the will to address misdemeanor crimes on Indian lands.

Finally, federal courts are not equipped to handle domestic violence-related reservation cases or to issue reservation-based orders of protection. Federal courts have little expertise or experience in the realm of family law—domestic disputes are typically within the purview of tribal and state governments—the governments closest to the community impacted. Most states require that requests for protection orders be addressed in a short time period. H.R. 4970 includes no such requirement and it is likely that proceedings in the federal courts will take weeks or months. As such, it is impractical to have federal courts delve into these types of cases when they arise on tribal lands rather than having tribal courts—the best-equipped and most appropriate authorities to issue domestic violence orders of protection on reservation—handle them. Domestic violence is an intimately personal and local crime. It's proven that one of the only ways to prevent abuse from escalating is to force the offender to face the local community. A solution that requires tribal victims

and witnesses to travel to far-away federal courts to seek a protection order that may or may not be enforced by federal authorities is no solution at all.

For the reasons listed we continue to oppose H.R. 4970 and urge inclusion of the bipartisan provisions in the SAVE Act that were the product of years of government-to-government consultation with tribes. Thank you for your consideration and please do not hesitate to contact me or Katy Jackman, Staff Attorney for NCAI at (202) 466-7767 if you have any questions or want additional information.

Sincerely,

Jacqueline Johnson Pata
Executive Director