

## **DAINES ONCE AGAIN SLAMS NON-TRIBAL CITIZENS TO FAVOR TRIBES - THIS TIME THROUGHOUT THE UNITED STATES**

A little over a week ago I became aware of a bill being pushed by Daines in the Senate and by Zinke in the House that could have an incredibly damaging effect upon non-tribal folks living within the boundaries of the CSKT reservation as well as all other reservations in Montana and across the United States. This bill is cloaked in PR language and spin to appear to be an effort to help Native American tribes combat the fentanyl and opioid epidemic that is rampant across the country but which proponents of the bill insist is more serious and pervasive on reservations therefore requiring special privileges to be granted to Tribes to arrest non-tribal members and prosecute them in Tribal courts.

I want to begin by explaining the legislative process that began in both the Senate and the House on June 5, 2025. In this particular process both the House and the Senate must pass the bill in identical form and it then must be signed by the President to become law. So we have HR 3773 and S 1967, identical bills titled the Protection for Reservation Occupants against Trafficking and Evasive Communications Today Act of 2025, or the PROTECT Act of 2025. On June 5<sup>th</sup> after two readings in the both House and the Senate, the bills were passed on to two committees in the House: the Committee on the Judiciary and the Committee on Natural Resources' Sub-Committee on Indian and Insular Affairs; and by the Senate to the Senate Committee on Indian Affairs. If those committees pass the bills, they would then go to each body for discussion and a vote. If passed by both bodies, the bill would go to the President for signature.

I need to point out some flaws in the bill that I believe are very problematic. First I need to point out that this bill is not a standalone bill, it is an amendment to two existing Acts: the Stored Communications Act and the Indian Civil Rights Act of 1968. So it is written in a way that makes it very difficult to understand exactly what is proposed. It is filled with language changes and additions to existing language in both Acts that are being

amended. In order to fully understand the implications, one really needs to have the original Acts to make a line by line comparison after making the proposed changes to the original language. I have asked a person who is pretty expert at this type of thing to take on this daunting task but it is going to take time. Meanwhile I want to draw your attention to some language in the proposed bill that I see as problematic.

1. The language in the bill's introduction includes an ambiguous phrase that I believe can and will be used to broaden the intent of the bill in a way that could prove to be very harmful to non-Tribal American citizens. The intro reads as follows: *A Bill to amend the Stored Communications Act to include Tribal courts as courts of competent jurisdiction, to amend the Indian Civil Rights Act of 1968 to confer Tribal jurisdiction over controlled substances, related offenses, and firearms, **and for other purposes. (Emphasis by author)***
2. Within the amendment to the Indian Civil Rights Act, the bill amends Title 18 of the U.S. Code to expand Special Tribal Criminal Jurisdiction, allowing Tribes to prosecute non-Native offenders for drug trafficking, related offenses and firearms offenses. This overturns a 1978 Supreme Court ruling in *Oliphant v. Suquamish Indian Tribe*, which barred Tribal courts from prosecuting non-Natives for most crimes.
3. Throughout the bill the phrase "violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs" occurs several times. One can infer from this phrase that "the criminal law of the Indian Tribe" is used because the laws of the Indian Tribe can be different than State or Federal law and that Indian laws can vary from Tribe to Tribe. How could that be problematic for non-Tribal American citizens...(she asked sarcastically)
4. The Amendment to the Indian Civil Rights Act includes the addition of the phrase "firearms offense" and the definition of that phrase: *The term "firearms offense" means a violation of the criminal law of the Indian tribe that has jurisdiction over the Indian Country where the violation occurs that involves the use or possession of a firearm a) in*

*furtherance of a covered crime or b) by a person who has been convicted of domestic violence.* What exactly is a “covered crime”? Notice that the language does not say “in the furtherance of drug trafficking”. All reference to firearms offenses lack specificity and are, I believe, intentionally ambiguous.

5. The last section of the Bill, Section 4, Bureau of Prisons Tribal Prisoner Program, appears to broaden the definition of “Tribal Prisoner” by inserting the words “or offenders convicted pursuant to the exercise of special Tribal criminal jurisdiction”. So non-tribal American citizens, if convicted in a Tribal court, will be considered “Tribal prisoners”. What are the implications of that?
6. And lastly, I want to share with you something that I think may surprise you, as it did me. I asked AI (GROK) if any lawyer admitted to the State bar can practice within a Native American Tribal Court. The answer is “No, a lawyer admitted to a state bar cannot automatically practice in a Native American Tribal Court. Tribal courts are sovereign judicial systems, and each tribe set its own rules for attorney admission.” Which leads me to another question: do Native American Tribal Courts conduct jury trials for criminal offenses and, if so, from what population is the jury pool selected? Would non-tribal citizens be guaranteed a jury of their peers?

I would ask you to think about what the implications are of such a flawed and biased law possibly being implemented across the United States. Most of our readers have followed what has happened with the Water Compact and the tedious and seemingly futile battle that has been waged against that Daines (and Tester) debacle. The stated purpose of the Water Compact has been twisted and misapplied deliberately over the years until we have been left with a mess that is headed for the Supreme Court. The same tactics of deflecting and essentially presenting the intent of this Bill as something for the greater good or at least having benign effect upon non-Tribal American citizens is flat out deception. This bill will have the effect of solidifying nationally the idea that Native American Tribes are sovereign nations within the United States

and the implications of that demonstrate a surrender to an idea that is antithetical to our Constitution and the Bill of Rights.

Please make a sincere commitment to fighting for our rights as American citizens until this Bill is a shredded document lying on the floor of the Capitol building. You hear that overused term “existential threat” so often that it has ceased to have significant meaning. But I am going out on a limb to use it today: this bill is an existential threat to our civil liberties. It is a slippery slope (another overused term) that could strip away the rights of American citizens, and not just the rights of drug dealers or cartel members but John and Jane Doe who simply get swept up in a situation that allows for misuse and abuse of the Justice system.

If you are a Montana citizen, you should immediately contact Daines, Zinke, Sheehy and Downing. We need to get the word out to as many Montana citizens as we can, so tell people you know about this dangerous bill. If you have friends or relatives in other states that have reservations, we ask that you alert them as well. If you are up for a bigger effort, think about contacting the members of the committees that are currently deliberating the bill in the House and the Senate. If you are willing to do that, please send an email to [linda@lastchancepatriots.org](mailto:linda@lastchancepatriots.org) and I will send you all of their contact details.

Stay tuned!