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VAWA vs. Scofflaw: The Constitutionality of a Statute

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Federal jurisdiction largely governs non-Indian crimes in Indian Country. However, federal prosecutors decline to prosecute an astoundingly high number of sexual abuse charges. This jurisdictional gap creates a culture of impunity for non-Indian perpetrators. To address these problems, Congress reauthorized the Violence Against Women Act in 2013 with an additional provision called the Special Domestic Violence Criminal Jurisdiction ("SDVCJ"). SDVCJ enabled Indian tribes to exercise criminal jurisdiction over certain non-Indians. This statute marked the first time Congress recognized and affirmed tribal criminal jurisdiction over non- Indian offenders. Although SDVCJ has been celebrated, the statute has not escaped criticism. Tribal advocates argue the statute did not go far enough. Non-tribal advocates argue SDVCJ jurisdiction violates the United States Constitution. This article addresses these constitutional concerns. This article also addresses, for the first time, how the court might rule on these constitutional issues with the recent addition of Justice Gorsuch to the bench. If the court sustains the constitutionality of SDVCJ hundreds of non-Indian perpetrators could potentially be subject to tribal criminal jurisdiction. This article concludes that SDVCJ does not violate the constitution. Even more, SDVCJ advances what tribes and the government most desire: a return to traditional tribal sovereignty.

Related People



Alexander M. Mallory

t 602.726.7312

amallory@ktslaw.com