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The Violence Against Women Act: Reauthorization Fundamentally Flawed

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Abstract

Despite the fact that each state has statutes that punish domestic violence, the federal government intervened in 1994 with the Violence Against Women Act (VAWA). The Senate is now expected to consider the newest reauthorization of the act—S. 1925—which includes radical changes that greatly alter the original purpose of the law, already problematic in its own right. Using federal agencies to fund the routine operations of domestic violence programs that state and local governments could provide is a misuse of federal resources and a distraction from concerns that truly are the province of the federal government. Simply expanding the VAWA framework with extensive new provisions and programs that have been inadequately assessed is sure to facilitate waste, fraud, and abuse and will not better protect women or victims of violence generally.

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Certainly, domestic violence, especially against women, is deplorable. Violence against women—or anyone, for that matter—is rightfully a crime punishable by incarceration, depending on the degree of assault, in all 50 states and the District of Columbia.

Despite the fact that the fight against domestic violence is waged mainly at the state and local levels, the federal government intervened during the Clinton Administration with the Violence Against Women Act (VAWA) of 1994. The Senate is now expected to consider the third reauthorization of the act—S. 1925. Unfortunately, S. 1925 includes radical and sweeping changes that greatly alter the original purpose and scope of the law, already problematic in its own right. For the reasons discussed below, there are very real substantive concerns about the expansion and misdirection of the new bill.

Instead of working to fix the bill's substantive problems, proponents of S. 1925 are attempting to characterize opponents of the bill as anti-woman and pro-domestic violence—an absurd proposition that stifles genuine debate on the legislation's many problems. Members of Congress should ignore the blatant

Talking Points

- Under the U.S. constitutional framework, police power is reserved to the states, and all states have laws to protect all citizens from crimes against them, including domestic violence against women. The battle against domestic violence should be waged, and paid for, primarily at the state and local levels.
- The reauthorization bill for the Violence Against Women Act—S. 1925—engages in mission creep by expanding VAWA to men and prisoners, despite the lack of rigorous evaluations to determine the effectiveness of existing VAWA programs.
- S. 1925 expands the already duplicative grant programs authorized by VAWA.
- Without precedent, the bill surrenders the rights of average Americans to racially exclusive tribal courts.
- Instead of working to fix the bill's substantive problems, proponents characterize opponents of S. 1925 as anti-woman and pro-domestic violence—an absurd proposition that stifles genuine debate on the legislation's many problems.

mischaracterizations and give prudent consideration to the real effects of the VAWA and the consequences involved in its proposed reauthorization and expansion.

Specifically, Members of Congress should be concerned with the following flaws in S. 1925:

- The bill engages in mission creep by expanding VAWA to men and prisoners, despite the lack of scientifically rigorous evaluations to determine the effectiveness of existing VAWA programs;
- The bill expands upon the already duplicative grant programs authorized by VAWA; and
- Without precedent, the bill surrenders the rights of Americans who are not American Indians to racially exclusive tribal courts.

Background

Under America's constitutional framework, police power is reserved to the states, and the states have laws to protect all citizens from crimes against them, including violence against women. The battle against domestic violence is thus waged and paid for, primarily, at the state and local levels.

Over the years, states and localities have adapted to the realities of domestic violence and have created specialized domestic violence courts, treatment programs, shelters, retraining programs, public awareness campaigns, prevention programs, and the like. State and local prosecutors, judges, and defense attorneys have taken specialized courses in the investigation, prosecution, treatment, and a constellation of other issues related to domestic violence, including violence against women.

Although there is much work to be done to further reduce the incidence of domestic and family violence—and it most likely will be an ongoing battle—the states and their subdivisions are to be commended for their adaptations and creative programs to address the scourge of domestic violence.

The VAWA initiated an extensive federal role in combating sex-based violence. Because proponents of the law argued that violence against women is a form of social control perpetuated by—according to their arguments—women's weaker social, political, and financial status, the substance of the VAWA focused largely on redistributing power and resources to female victims. This philosophy of group victimhood undermines equal protection and the rule of law and has been detrimental to the protection of victims generally.

To address the problem of domestic violence appropriately, the federal government should limit itself to handling tasks that have been assigned to it by the Constitution and which state and local governments cannot perform by themselves. The reflexive tendency to search for solutions at the national level is misguided and problematic. The problems faced by victims of domestic violence are serious, but they are almost entirely and inherently local in nature and should be addressed by state and local governments.

Thus, the original VAWA and its subsequent reauthorizations represent the federal government's overreach into matters more appropriately addressed by state and local governments.

Mission Creep: Watering Down Services by Including Men and Prisoners

Violence against anybody is wrong, period. However, the radical and unnecessary changes proposed in S. 1925 would leave the law only tenuously connected to the VAWA's original purpose—reducing domestic violence against women.

Despite attempts to frame the debate over reauthorization solely in terms of women's rights, most modifications have nothing to do with women and have blurred the original intent of the law without necessarily improving its purpose or effectiveness.

For example, previous reauthorizations have expanded the VAWA to include services to young people and the elderly. Continuing VAWA's mission creep, S. 1925 fundamentally transforms the VAWA from a law originally specially focused on women to a law targeting both men and women.

Modifications in Services, Training, Officers, and Prosecutors Violence Against Women (STOP) grants are one example. S. 1925 alters the purpose areas of STOP grants to allow services to populations that previously have been denied access based on sexual orientation or gender identity.[1]

In addition to this change, S. 1925 also contains a provision mandating that all VAWA grant programs not discriminate on the basis of gender identity and sexual orientation. S. 1925 includes an exception that

1. "Gender identity" is defined as one's actual or perceived sex as codified in 18 U.S.C. 249(c)(4).

allows sex segregation or sex-specific programming by VAWA grantees when such exclusions are deemed necessary. However, when such exclusions occur, grantees must provide comparable services to excluded individuals.

This requirement can place providers of services to domestic violence victims in difficult situations that run counter to their mission. Consider a program with limited resources that specializes in providing shelter to battered women. If passed, S. 1925 would require the shelter to provide comparable services to male victims of domestic violence. It may be entirely inappropriate for the shelter to have men share living areas, bedrooms, and bathrooms with women. Under this scenario, the shelter would have to find separate yet comparable accommodations. This requirement could create financial hardship for the shelter that exists to provide assistance specifically to female victims.

S. 1925 further widens the purpose areas of STOP grants to provide support services to victims of sexual violence in prison. Yet the overwhelming majority of these victims are male.[2] This expansion is proposed in addition to, and in spite of, the Prison Rape Elimination Act of 2003, which authorizes grants specifically to address sexual violence in prisons.

The Need to Validate Evidence of Effectiveness

The principal reasons for the existence of VAWA programs are to mitigate, reduce, or prevent the effects and occurrence of domestic violence. Despite being created in 1994, grant programs under the VAWA have not undergone large-scale, scientifically rigorous evaluations of effectiveness. The General Accounting Office concluded that previous evaluations of VAWA programs "demonstrated a variety of methodological limitations, raising concerns as to whether the evaluations will produce definitive results."[3] Further, the evaluations were not representative of the types of programs funded nationally by the VAWA.[4]

Nationally representative, scientifically rigorous impact evaluations should be used to determine whether these national grant programs actually produce their intended effects. Obviously, there is little merit in the continuation of programs that fail to ameliorate the social problems they target.

If Congress is intent on reauthorizing the VAWA, it should authorize funding for large-scale, multi-site experimental evaluations of VAWA grant programs.[5] The Transitional Housing Assistance Grants are an ideal candidate for a large-scale experimental evaluation of effectiveness. Transitional housing programs typically operate at capacity and have a waiting list. When demand for services is greater than the supply of services, this situation is ideal for randomized experimentation. S. 1925 does not require scientifically rigorous evaluations of VAWA programs.

Duplication and Lack of Accountability

By calling for a radical expansion of the VAWA, proponents of S. 1925 continue to expand the responsibilities of the Office of Violence Against Women (OVW), yet those duties are already duplicated by other federal agencies. The proposed legislation creates new programs focused on children and the elderly.

For instance, S. 1925 creates a new grant program, Creating Hope Through Outreach, Options, Services, and Education for Children and Youth (CHOOSE Children and Youth), that provides services to young people up to age 24. The CHOOSE Children and Youth grants duplicate efforts by the Justice Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP). OJJDP's Safe Start Initiative provides grants to prevent and diminish the effect of children's exposure to violence in their homes and communities. One of the primary problem areas on which these grants focus is the effect that domestic violence has on children, teens, and those in their early twenties.

2. Paul Guerino and Allen J. Beck, "Sexual Victimization Reported by Adult Correctional Authorities, 2007–2008," Bureau of Justice Statistics *Special Report*, January 2011, at *http://bjs.ojp.usdoj.gov/content/pub/pdf/svraca0708.pdf* (March 27, 2012).
3. U.S. General Accounting Office, *Justice Impact Evaluations: One Byrne Evaluation was Rigorous; All Reviewed Violence Against Women Office Evaluations Were Problematic*, GAO-02-309, March 2002, p. 10, at *http://www.gao.gov/assets/240/233527.pdf* (March 24, 2012).
4. *Ibid.*, p. 12.
5. For more information about the need for more large-scale experimental evaluations of federal social programs, see David B. Muhlhausen, "Evaluating Federal Social Programs: Finding Out What Works and What Does Not," Heritage Foundation *Backgrounder* No. 2578, July 18, 2011, at *http://www.heritage.org/research/reports/2011/07/evaluating-federal-social-programs-finding-out-what-works-and-what-does-not?query=Evaluating+Federal+Social+Programs:+Finding+Out+What+Works+and+What+Does+Not*.

The programs authorized by the VAWA duplicate programs offered by other federal agencies. The Justice Department's Office for Victims of Crime (OVC), for instance, has long considered domestic violence a priority funding area. OVC allocates a minimum of 10 percent of its grant funding made available under the Victims of Crime Act (VOCA) to programs that serve victims of domestic violence, sexual assault, and child abuse.[6]

Numerous programs run by the Department of Health and Human Services provide domestic violence services as part of their missions. These programs include:

- Family Violence Prevention and Services/Grants for Battered Women's Shelters discretionary grants;
- Child Abuse and Neglect State Grants;
- The Healthy Start Initiative;
- The Family and Community Violence Prevention Program; and
- Community-Based Child Abuse Prevention Grants.

Surrendering Rights to Tribal Courts

American Indian tribes operate racially exclusive governments on their territories and lands. They have their own sovereign powers and operate separately from federal, state, and local governments under which all other Americans live. Additionally, American Indians operate and run their own tribal courts, which to date have limited jurisdiction. That jurisdiction is limited to members of Indian tribes.

One provision of S. 1925 would, for the first time in the nation's history, extend the criminal jurisdiction of tribal courts to people who are not members of an Indian tribe and who are accused of domestic violence that allegedly occurred on tribal territory. This surrender by federal or state governments of jurisdiction over Americans who are not members of Indian tribes is unprecedented, unnecessary, and dangerous.

Today, if John and Mary Smith were visiting a casino on an Indian reservation and John assaulted Mary, John would be charged by the federal government with assault and would be prosecuted by the local U.S. Attorney's Office in federal magistrate court. Under the radical proposal in S. 1925, John would be tried in one of several hundred different tribal courts.

This radical and unorthodox surrender of jurisdiction is particularly alarming because tribal courts do not necessarily adhere to the same constitutional provisions that protect the rights of all defendants in federal and state courts.

While S. 1925 mandates that tribal courts must grant defendants all the protections guaranteed by the United States Constitution, there appears to have been little study by the Senate Committee on the Judiciary of how capable tribal courts are in implementing this mandate. The committee did not even conduct a hearing on this issue while drafting the reauthorization legislation. This lack of legislative investigation is even more alarming since, in 1978, the United States Supreme Court ruled that Indian tribes, unless granted the power by Congress, do *not* have inherent jurisdiction to prosecute and punish non-Indians.[7]

This proposal raises important issues that are worthy of further legislative investigation through hearings by the Senate Committee on the Judiciary.

Conclusion

Fighting domestic violence is not, and never has been, a partisan issue. Everyone is against domestic violence. The law enforcement battle to combat domestic violence is (for the most part) waged and paid for by the state and local governments. Every state has statutes that punish domestic violence. Many jurisdictions have specialized courts that hold offenders accountable and offer services to victims. Court officers, including prosecutors, judges, and defense counsel, have attended specialized training to enable them to fully understand the unique challenges and dynamics posed by domestic violence and its interrelationship to other crimes, such as child abuse.

Using federal agencies and grant programs to fund the routine operations of domestic violence programs that state and local governments themselves could provide is a misuse of federal resources and a distraction from concerns that truly are the province of the federal government. Simply expanding this framework with extensive new provisions and programs that have been

6. U.S. Department of Justice, Office of Justice Programs, "Domestic Violence," *OJP Fact Sheet*, November 2011, at *http://www.ojp.usdoj.gov/newsroom/factsheets/ojpfs_domesticviolence.html* (March 21, 2012).
7. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

inadequately assessed is likely to facilitate waste, fraud, and abuse and will not better protect women or victims of violence generally.

In addition to federal overreach, the VAWA over the years has strayed from its original intent. The current reauthorization effort, S. 1925, is a gross distortion of the original law and is gravely flawed.

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