IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WEIH STEVE CHANG, ET AL., Plaintiffs, v. LAURA L. ROGERS, et al, Defendants.	Case No.: 19-cv-1241 (TSC)

PLAINTIFFS MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSTION TO DEFENDANTS MOTION TO DISMISS COMPLAINT

BACKGROUND

The Violence Against Women Act (VAWA) was originally enacted in 1994. It addressed congressional concerns about violent crime, and violence against women in particular, in several ways. It allowed for enhanced sentencing of repeat federal sex offenders; mandated restitution to victims of specified federal sex offenses; and authorized grants to state, local, and tribal law enforcement entities to investigate and prosecute violent crimes against women, among other things. VAWA has been reauthorized three times since its original enactment.

The fundamental goals of VAWA are to prevent violent crime; respond to the needs of crime victims; learn more about crime; and change public attitudes through a collaborative effort by the criminal justice system, social service agencies, research organizations, schools, public health organizations, and private organizations. The federal government tries to achieve these

goals primarily through federal grant programs that provide funding to state, tribal, territorial, and local governments, nonprofit organizations and universities.

VAWA programs generally address domestic violence, sexual assault, dating violence, and stalking—crimes for which the risk of victimization is highest for women—although some VAWA programs address additional crimes. VAWA grant programs largely address the criminal justice system and community response to these crimes, but certain programs address prevention as well. The Office on Violence Against Women (OVW) administers the majority of VAWA-authorized programs, while other federal agencies, including the Centers for Disease Control and Prevention (CDC) and the Office of Justice Programs (OJP), also manage VAWA programs.

Although Congressional intent in the creation of VAWA was altruistic, in application it has had profound and adverse effect on the lives of innocent men and men wrongfully accused of domestic violence. Two of these men who have had their lives destroyed by VAWA based on wrongful accusations filed in the instant Complaint on April 29, 2019. As described in the Complaint, this civil action challenges the constitutionality of the enactment of the Violence Against Women Act (United States Code at 34 U.S. Code § 12291 et. seq., hereafter, "VAWA" or the "Act"), as subsequently amended and also the rules, regulations and policies under which it is enforced. Plaintiffs allege that Congress exceeded its authority under the Commerce Clause and the 14th Amendment to the United States Constitution when it enacted a "Separate but Equal" domestic violence law which it titled as the "Violence Against Women Act" and allege further that the rules, regulations and administrative procedures employed to enforce the Act have been and continue to be unconstitutionally discriminatory. This action challenges the regulation of intrastate domestic violence which is an area sovereign to the states.

This civil action also challenges the constitutionality of the cooperative federalism scheme, which constitutes the enforcement mechanism of the Act. Defendants employed and continue to employ the principles of cooperative federalism in administering the Act. In so doing, Defendants deliberately disregard to the rights of the accused or to the rights of the actual victims. Defendants, among other things, deprived Plaintiffs' of due process protection, imposed taxation without representation, and levied excessive fines upon domestic violence victims in order to enable themselves to claim that the program was successful when in fact, the unfair and biased enforcement of the Act promoted a false narrative under which innocent persons were prosecuted and penalized without the benefit of due process or equal protection under the 14th Amendment of the United States Constitution.

Plaintiffs seek judicial review of the Act itself and its method of enforcement under the Administrative Procedure Act and the 10th Amendment of the Constitution. Plaintiffs also assert that Congress overstepped constitutional boundaries under the Commerce Clause and 14th Amendment to the United States Constitution when it enacted VAWA, a "Separate but Equal" law, to regulate sexual assaults and domestic violence by men against women using its powers to regulate interstate commerce.

LEGAL STANDARD

A. Rule 12(b)(1)

In deciding a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1), courts "must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987) (quoting *Warth v. Seldin*, 422 U.S. 490, 501-02 (1975). Courts must grant plaintiffs "the benefit of all inferences that can be derived from the facts alleged." *Thomas v. Principi*, 394 F.3d 970, 972

(D.C. Cir. 2005) (quoting *Barr v. Clinton*, 370 F.3d 1196, 1199 (D.C. Cir. 2004)). With respect to standing, general factual allegations of injury may suffice at the pleading stage, for on a motion to dismiss the Court presumes that general allegations embrace those specific facts that are necessary to support the claim. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The Court may consider material outside of the pleadings in ruling on a motion to dismiss for lack of subject matter jurisdiction, but so long as those materials are considered only for purposes of evaluating subject matter jurisdiction under Rule 12(b)(1), the motion to dismiss is not converted to a motion for summary judgment. *See, e.g., Caesar v. U.S.*, 258 F. Supp. 2d 1, 2-3 (D.D.C. 2003) (Sullivan, J.).

B. Rule 12(b)(6)

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a complaint, which "must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Gregorio v. Hoover*, 238 F. Supp. 3d 37, 44-45 (D.D.C. 2017) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). Furthermore, the court presumes that the general factual allegations in the complaint embrace those specific facts necessary to support the claim. *Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 889 (1990). A plaintiff is "not required to plead facts sufficient to prove its allegations; rather, the complaint need only contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Covad Commc'ns. Co. v. Bell Atl. Corp.*, 398 F.3d 666, 671 (D.C. Cir. 2005) (quoting Fed. R. Civ. P. 8(a)). The standard is such because the "issue presented by a motion to dismiss is not whether a plaintiff

will ultimately prevail but whether a claimant is entitled to offer evidence to support the claims." *Covad*, 398 F.3d at 671.

ARGUMENT

I. Plaintiffs Have Standing and the Court Has Subject Matter Jurisdiction

To establish subject matter jurisdiction, the Court need find that only one of the Plaintiffs has standing under Article III of the U.S. Constitution. *Mendoza v. Perez*, 754 F.3d 1002, 1010 (D.C. Cir. 2014). In order to have standing, a plaintiff must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

Plaintiffs challenge the constitutionality of 34 U.S.C. § 12291 which is distinguishable and severable from U.S.C. § 2261 (2006) which addresses interstate domestic violence; 18 U.S.C. § 2261a (2006) which addresses interstate stalking; and 18 U.S.C. § 2262 (2006), addressing the interstate violation of a protection order. *See* Motion at 3, 5, and 9. Here, Plaintiffs challenge the prosecution of intrastate domestic violence crimes prosecuted by OVW through the mechanism of cooperative federalism not Congressional authority to regulate interstate crime.

"To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Spokeo*, 136 S. Ct. at 1548 (internal quotation marks omitted). In October of 2012, Defendant Chang faced his first VAWA prosecution for alleged domestics violence offenses after his ex-wife consulted Delaware Volunteer Legal Service ("DVLS"), a VAWA grantee. *See* Compl. ¶8. Although Chang reported to the Wilmington, Delaware Police Department he had been threatened by his ex-wife and reported child abuse and neglect, both the

WPD and Delaware Volunteer Legal Services (DVLS) attempted to place Chang on Delaware's child abuser registry. *Id.* On information and belief, based on the false accusations of Chang's ex-wife, Chang was included as a perpetrator of domestic violence on OVW's Biennial Report to Congress. *Id.*

Defendant Smith was arrested nine times in Delaware based on false allegations of sexual assault and domestic abuse by his ex-wife between 2009 and 2012. *See* Compl. ¶9. Smith's ex-wife was arrested in 2012 in Delaware for filing false police reports and lying to the police regarding the allegations she made against Smith. *Id*. In 2013, Smith was exonerated of all but the first of the charges made against him. *Id.* In 2017, Smith received a governor's pardon for the initial arrest and all remaining arrests and charges were expunged from his record. *Id*. Although exonerated, Smith was included as a perpetrator of domestic violence in the Biennial Reports, when, in fact, Smith was falsely accused and arrested. *Id*. As a result both Plaintiffs have established they suffered an injury in fact because they were both prosecuted pursuant to the Act.

The injury is traceable to Defendants based on cooperative federalism as described in the Complaint. Cooperative federalism refers to a concept in which the state governments, local governments, and the federal government share responsibility in the governance of the people. The Complaint alleges OVW operates under cooperative federalism where the federal government mandates actions from the Act which are delegated to state actors and private grantees. *See* Compl. ¶¶52-60. For a plaintiff to have Article III standing, "there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560

As described in the Complaint, the enforcement of 34 U.S.C. § 12291 begins with Congress levying taxes from the class plaintiffs to allocate funds to Federal Defendants; Second, Federal Defendants fund non-federal entities to prosecute the class plaintiffs under state laws driven by the federally promulgated rules, regulations and policies; Third, non-federal entities prosecute the class plaintiffs often without constitutionally guaranteed due process protection and equal protection for the purpose of maximum convictions; Fourth, non-federal entities report convictions and victims, the class plaintiffs, back to Federal Defendants and Congress as "achievements." *See* Compl. ¶¶*8-9 and 53-60.* The cycle of tax-fund-prosecute-report resumes when the Act is reauthorized. As a result, a causal connection exists between the class plaintiffs and Federal Defendants at each step of the cycle.

As described in the Complaint, the Act was written by authors using gender stereotypes without consideration of those wrongfully accused of such crimes. *See* Compl. ¶35. The Complaint states " the authors of the Crime Bill concerned themselves with "male predators on college campus" and "male predators at homes" when enacting the [men's] Violence Against Women Act." The result is that there is "Separate" enforcement of a seemingly "equal" law which has the same effect of a "Separate but Equal" laws in the early 1900's. *Id*. at ¶38. When VAWA was first enacted in 1994, the stated goal of Congress was to "deter and punish violent crimes against women."[1] No mention was made of any other violent crimes committed in intimate relationships other than those committed by men against women. *Id*. at ¶39. The name itself which purports to protect only women, leaves out men, gays and others based on sexual preference which exhibits its intentional disregard of fundamental fairness and equal protection.

[1] H.R Rep. No. 103-395, at 26 (1994). See Pub. L. 103-322 (Sept. 13, 1994).

The Supreme Court has held it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Lujan*, 504 U.S. at 561. At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we "presum[e] that general allegations embrace those specific facts that are necessary to support the claim." *Id*. Defendants argue "neither Plaintiff alleges that he is involved in a domestic relationship and likely to again be arrested for, or subject to, domestic violence." *Motion* at 7. This is a non-persuasive argument however, because as stated in the complaint Plaintiffs child custody, employment and social status have been profoundly affected and continues to be as a result of being arrested and subject to domestic violence proceedings. *See* Compl. ¶¶81, 151-157. These injuries are ongoing, affect all current and future relationships and can only be redressed if a favorable decision is rendered by this Court. [2]

The Supreme Court has held "a plaintiff's grievance must arguably fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit." *Bennett v. Spear*, 520 U.S. 154 at 162 (U.S. March 19, 1997) (citations omitted). "The "zone of interests" formulation was first employed in *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 25 L. Ed. 2d 184, 90 S. Ct. 827 (1970)." *Id.* Here, parties to VAWA prosecutions are either victims or defendants. Plaintiffs, as defendants in the VAWA prosecutions, were clearly within the "zone of interests" of the Act aimed at regulating domestic violence by men against women. Seeking due process rights and protection from false allegations of domestic violence under the Act, would also clearly place Plaintiffs within the

[2] Defendants cite *City of Los Angeles v. Lyons*, as authority for no future injury. In City of Los Angeles, the court did not see a sufficiently-plausible threat of future injury to the individual plaintiff. Here, Plaintiffs sufficiently plead "class plaintiffs ... during some point of their lifetime were or will be discriminatorily subjected to the full force of the Act". *See* Compl. ¶10.

zone of interests to be protected or regulated by 34 U.S.C. § 12291. *See Am. Bar Ass'n v. U.S. Dep't of Educ.*, 370 F. Supp. 3d 1, 18 (D.D.C. 2019).

Finally, Defendants argue taxpayers do not have standing to pursuant to Article 3. *Hein v. Freedom from Religion Foundation, Inc.*, 551 U.S. 587 (2007). The exception to this requires a plaintiff to establish (1) the government acted pursuant to its power under the Constitution's Taxing and Spending Clause and (2) the exercise of that power exceeds the permissible scope of Congressional power under that clause. *Id. citing Flast v. Cohen*, 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968). Here, the Complaint clearly alleges Congress exercised its power of regulatory taxation upon the class plaintiffs to fund VAWA, i.e. taxing to regulate commerce. *See* Compl. ¶¶1, 7, 43-47, 52, 55, and 61-64. Plaintiffs further plead that domestic violence and sexual assaults are inherently local crimes under state sovereignty and as a result Congress exceeded the scope of regulatory taxation. *Id.* Plaintiffs also claim that the exercise of the Taxing and Spending power by Congress exceeded the permissible scope under the 14th Amendment. *See Compl*. ¶¶1, 2, 5, 7, and 65.[3] As a result, Plaintiffs challenge meets the *Flast* exception and provides standing.

II. Plaintiffs Have Plead Claims Upon Which Relief Can Be Granted Pursuant to Rule 12(b)(6)

Plaintiffs claim constitutional and other deficiencies in VAWA, and present the following facts from the Complaint in support of each claim.

[3] Federal Defendants cited *Benning v. Georgia*, 391 F.3d 1299, 1304 (11th Cir. 2004) and *Charles v. Verhagen*, 348 F.3d 601, 609 (7th Cir. 2003). In both cases, courts upheld constitutionality of Religious Land Use And Institutionalized Persons Act in prohibiting religious discrimination by federal grantees, which are state prisons.

A. Count I States a Claim for Violations of the Commerce Clause and Fourteenth Amendment to the Constitution.

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a complaint, which "must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief." *Gregorio v. Hoover*, 238 F. Supp. 3d 37, 44-45 (D.D.C. 2017) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The Complaint states it is a constitutional challenge to VAWA based on Congress exceeding its authority under the Commerce Clause and 14th Amendment to the Constitution. *See Compl*. 1-4. The Supreme Court in *United States v. Lopez* held Commerce Clause jurisprudence has "identified three broad categories of activity that Congress may regulate under its commerce power." *United States v. Lopez*, 514 U.S. 558, 131 L. Ed. 2d 626, 115 S. Ct. 1624 (1995) (citing *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc*., 452 U.S. 264, 276-277, 69 L. Ed. 2d 1, 101 S. Ct. 2352 (1981); *Perez v. United States*, 402 U.S. 146, 150, 28 L. Ed. 2d 686, 91 S. Ct. 1357 (1971)).

"First, Congress may regulate the use of the channels of interstate commerce." 514 U.S. at 558 (citing *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 256, 85 S. Ct. 348, 13 L. Ed. 2d 258 (1964); *United States v. Darby*, 312 U.S. 100, 114, 85 L. Ed. 609, 61 S. Ct. 451 (1941)). "Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." 514 U.S. at 558 (citing Shreveport Rate Cases, 234 U.S. 342 (1914); *Southern R. Co. v. United States*, 222 U.S. 20, 32 S. Ct. 2, 56 L. Ed. 72 (1911); Perez, supra, at 150). "Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, . . . i.e., those activities that

substantially affect interstate commerce." 514 U.S. at 558-559 (citing *Jones & Laughlin Steel*, supra, at 37).

In *United States v. Morrison*, the Supreme Court addressed a constitutional challenge to VAWA and struck down its civil remedy provision. The Court rejected the governments "costs of crime" and "national productivity" arguments because they would permit Congress to "regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce." *United States v. Morrison*, 529 U.S. 598, 612 (U.S. May 15, 2000). "Gender-motivated crimes of violence are not, in any sense of the phrase, economic activity." *Id*. at 613. "While we need not adopt a categorical rule against aggregating the effects of any noneconomic activity in order to decide these cases, thus far in our Nation's history our cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature." *Id*.

Here, the government contends "Congress acted entirely within its Commerce Clause powers when it criminalized interstate domestic violence offenses." *See* Motion at 9. The Government further contends "under 18 U.S.C. § 2261(a), "travel in interstate or foreign commerce or . . . enter[ing] or leav[ing] Indian country" is a necessary element of the offense." *Id*. This contention strongly misstates Plaintiffs claim. Plaintiffs' claims are purely based on intrastate activity not interstate domestic violence activity.

As stated in *Morrison* and the Complaint, domestic violence and campus sexual assaults are inherently crimes under state sovereignty which do not affect interstate commerce. *Morrison* at 613, see also *Compl.* ¶¶ 1, 2, 43-47. As stated in the Complaint, claims by Plaintiffs were specific to Delaware and no claims were made regarding interstate domestic violence. *See*

Compl. ¶¶ 8, 9. Defendants have provided no argument rebutting Plaintiffs claims the crimes stated in the Complaint have a nexus with interstate economic activity. As a result, Plaintiffs have plead a short plain statement pursuant to Rule 12(b)(6) entitling them to relief.[4] [5]

B. Count II States a Claim for Violations of the Fourteenth Amendment to the Constitution.

To prevail on an equal protection claim, the plaintiff must show that the government has treated them differently from a similarly situated party and that the government's explanation for the differing treatment "does not satisfy the relevant level of scrutiny." *Settles v. U.S. Parole Comm'n*, 429 F.3d 1098, 1102, 368 U.S. App. D.C. 297 (D.C. Cir. 2005). "A threshold requirement of a due process claim" is "that the government has interfered with a cognizable liberty or property interest." *Hettinga v. United States*, 677 F.3d 471, 479-80, 400 U.S. App. D.C. 218 (D.C. Cir. 2012). "A . . . classification that does not burden either a fundamental right or a suspect class must be reviewed under the rational basis test."); see also *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1279 (9th Cir. 2004). Agency action is arbitrary and capricious if "the agency offers insufficient reasons for treating similar situations differently." *Cnty. of Los Angeles v. Shalala*, 192 F.3d 1005, 1022, 338 U.S. App. D.C. 168 (D.C. Cir. 1999).

Here, Plaintiffs claim that VAWA violates their equal protection because the law only protects women from domestic violence by men. The Act presumes men are the perpetrators and

[4] Federal Defendants cited *United States v. Clark* and *United States v. Larsen,* which are interstate or international criminal cases respectively. Plaintiffs' claims focus on intrastate domestic violence and criminal activity only.
[5] Federal Defendants cited *South Dakota v. Dole*, *Benning v. Georgia*, and *Charles v. Verhagen*. In all three cases, the federal granting authorities imposed various funding conditions within the constitutional limits.

cannot themselves be victims. *See* Compl. ¶¶8, 12, 113, 116 127-132, 134-135, 137-138, 140, 144, 146-147, 151, 155, 156, and 157-158. The name Violence Against Women itself proves that women are the only perceived victims of domestic violence while other groups such as men, gays and others are excluded from the protected class. Defendants allege that Plaintiffs do not identify any specific OVW rule, regulation or policy that denies them equal protection. This assertion is incorrect however, because the clear focus of Plaintiffs Complaint is that the Act itself treats them differently based on their gender. "The Violence Against Women Act (VAWA Title IV of P.L. 103-322) was originally enacted in 1994 to address congressional concerns about violent crime, and violence against women in particular." *See* CRS Report # R45410, 4/23/2019. As a result, Plaintiffs have made a short plain statement pursuant to Rule 12(b)(6) for violation of the Fourteenth Amendment.[6]

C. Count III States a Claim Under the Fourth, Fifth and Sixth Amendments to the Constitution

The Fourth, Fifth and Sixth Amendments to the Constitution, also known as the "Bill of Rights," spells out personal rights for individuals charged with crimes. The Fourth Amendment for the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. The Fifth Amendment provides that no individual shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime

[6] Defendants cite *Muwekma Ohlone Tribe v. Salazar*, in which the court opined "[T]he recognition of Indian tribes remains a political, rather than racial determination. Recognition of political entities, unlike classifications made on the basis of race or national origin[,] are not subject to heightened scrutiny." The discrimination alleged here however, is based on gender.

shall have been committed, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Defendant argues that "to support their claims under the Fourth, Fifth, and Sixth Amendments, Plaintiffs make a series of conclusory and largely incomprehensible allegations, none of which states a claim." *See* Motion at 11. In the Complaint Plaintiffs claim "under the Act Defendants promulgated and instituted secret extrajudicial authorities nationwide to pre-determine "victims" for the sole purpose of deliberately seizing the accused persons' properties and other constitutionally protected rights and privileges without due course of law, in violations of the 4th and 5th Amendments." *See Compl*.¶180.

Plaintiffs also claim "under the Act Defendants promulgated and instituted a form of double jeopardy where a single stream of gender-neutral taxation funded both private and governmental prosecutions of class plaintiffs, who were held to answer for the same "National" or infamous crimes, in violation of the 5th Amendment." *Id*. at 181. Additionally, Plaintiffs claim Under the Act Defendants promulgated and instituted civil Lynch proceedings nationwide accusing class plaintiffs of committing "National Crimes" where the assistance of counsel for defense of the accused was deliberately removed to maximize convictions, in violations of the 6th Amendment." *Id*. at 182.

The Supreme Court has held "the question is merely whether petitioner, if he can demonstrate an injury consequent upon the violation by federal agents of his Fourth Amendment rights, is entitled to redress his injury through a particular remedial mechanism normally available in the federal courts." *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, citing *Cf. J. I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964); *Jacobs v.*

United States, 290 U.S. 13, 16 (1933). "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Id*. at 397, citing *Marbury v. Madison*, 1 Cranch 137, 163 (1803). “Having concluded that petitioner's complaint states a cause of action under the Fourth Amendment, supra, at 390-395, we hold that petitioner is entitled to recover money damages for any injuries he has suffered as a result of the agents' violation of the Amendment.” *Id*. Here, Plaintiffs’ claims under the Fourth, Fifth, and Sixth Amendments arise from this unique cooperative enforcement scheme between the states and federal government and are traceable to Unnamed Defendants acting in their capacity as VAWA Administrators and Coordinators.

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a complaint, which “must contain ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’” *Gregorio v. Hoover*, 238 F. Supp. 3d 37, 44-45 (D.D.C. 2017) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A plaintiff is “not required to plead facts sufficient to prove its allegations; rather, the complaint need only contain ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’” *Covad Commc’ns. Co. v. Bell Atl. Corp.*, 398 F.3d 666, 671 (D.C. Cir. 2005) (quoting Fed. R. Civ. P. 8(a)). Here, in accordance with Rule 12(b)(6), Plaintiffs have plead a short plain statement as to why they are entitled to relief. While Defendants dispute that Plaintiffs have plead facts sufficient for a claim, Rule 12(b)(6) does not require all facts be plead to prove the allegations at this stage. As a result, the Motion to Dismiss regarding the Fourth, Fifth and Sixth Amendments must be denied.

D. Count IV States a Claim for Relief Under the APA and 10th Amendment.

To satisfy the "case" or "controversy" requirement of Article III, which is the "irreducible constitutional minimum" of standing, a plaintiff must, generally speaking, demonstrate that he has suffered "injury in fact," that the injury is "fairly traceable" to the actions of the defendant, and that the injury will likely be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992); *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc*., 454 U.S. 464, 471-472, 70 L. Ed. 2d 700, 102 S. Ct. 752 (1982). As previously stated, Plaintiffs have standing because they suffered injury in fact by being prosecuted under the Act, that injury is traceable to the Act and a favorable decision would redress the harm they continue to face based on proceedings against them.

In addition to having an injury fairly traceable to government action, the government action must be final. *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). "As a general matter, two conditions must be satisfied for agency action to be "final": First, the action must mark the "consummation" of the agency's decision making process." Id. citing *Chicago & Southern Air Lines, Inc. v. Waterman S. S. Corp*., 333 U.S. 103, 113, 92 L. Ed. 568, 68 S. Ct. 431 (1948). "It must not be of a merely tentative or interlocutory nature… And second, the action must be one by which "rights or obligations have been determined," or from which "legal consequences will flow." Id. citing *Port of Boston Marine Terminal Assn. v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71, 27 L. Ed. 2d 203, 91 S. Ct. 203 (1970).

Here, Defendants allege Plaintiffs fail to state a claim pursuant to the APA or Tenth Amendment. In the Complaint however, Plaintiffs claim "under the Act Defendant OVW

promulgated and instituted secret extrajudicial authorities nationwide, produced multitude of fraudulent victims receiving OVW program services, and tabulated fraudulent cases and submitted to Congress in its Biennial Reports." *See* Compl. ¶184. Plaintiffs further claim "OVW program services are entirely funded by taxpayers and therefore all records with regard to are subject to judicial review under APA." *Id*. As a result, Plaintiffs clearly made a shortly plain statement regarding its claim under the APA. Contrary to Defendants assertion, at this stage Plaintiffs are not required to put forward all facts to prove the APA claim.

Defendants argue that "because Plaintiffs have not established that Congress overstepped its authority when it enacted VAWA, no Tenth Amendment claim exists." *See* Motion at 12. As the Supreme Court held in *Lopez,* modern Commerce Clause jurisprudence has "identified three broad categories of activity that Congress may regulate under its commerce power." 514 U.S. at 558 (citing *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc*., 452 U.S. 264, 276-277, 69 L. Ed. 2d 1, 101 S. Ct. 2352 (1981); *Perez v. United States*, 402 U.S. 146, 150, 28 L. Ed. 2d 686, 91 S. Ct. 1357 (1971)). The Morrison Court held "Gender-motivated crimes of violence are not, in any sense of the phrase, economic activity…While we need not adopt a categorical rule against aggregating the effects of any noneconomic activity in order to decide these cases, thus far in our Nation's history our cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature." *Morrison* at 613, *see also Compl*. ¶44-47.

As stated in the Complaint, "the cooperative federalism under the Act, as exemplified in Delaware's Title 11 Chapter 87, § 8700-8709, the blending of the prosecutorial power with the judicial power, the blending of federal power with state power, and the rules, regulations and policies promulgated by Defendant OVW violated the 10th Amendment and APA, and are

therefore subject to judicially review." *See* Compl. ¶185. Plaintiffs have therefore made a short plain statement for a claim under the 10th Amendment.

E. Count V of the Complaint States a Claim for Relief Under the Tucker Act.

The Little Tucker Act is one statute that unequivocally provides the Federal Government's consent to suit for certain money-damages claims. *United States v. Mitchell*, 463 U.S. 206, 216, 103 S. Ct. 2961, 77 L. Ed. 2d 580 (1983) (Mitchell II). Subject to exceptions not relevant here, the Little Tucker Act provides that "district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims," of a "civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1346(a)(2). The Little Tucker Act and its companion statute, the Tucker Act, § 1491(a)(1), do not themselves "creat[e] substantive rights," but "are simply jurisdictional provisions that operate to waive sovereign immunity for claims premised on other sources of law." *United States v. Navajo Nation*, 556 U.S. 287, 290, 129 S. Ct. 1547, 173 L. Ed. 2d 429 (2009).

Here, Defendants argue the Tucker claims fail because Plaintiffs have not established any of the claims upon which it is predicted and because the Court lacks jurisdiction. *See* Motion at 12. The Complaint however, clearly states the "Class plaintiffs were subject to unlawful federal taxation in funding the "Separate but Equal" Act that Defendants OVW and Rogers enforced with *de facto* and *de jure* discriminatory force, by which class plaintiffs were intentionally deprived of government services, either as a defendant of "National Crimes" or as a real victim

of domestic violence." *See* Compl. ¶187. The Complaint also states "the taxation without representation scheme of the Act and its enforcement gave rise to class plaintiffs' constitutional claims under the Tucker Act, particularly taking of property by the government with no intention to provide related government services." *Compl*. ¶188.

Even if Congress were found to have not exceeded its power in regulatory taxation to control intrastate crimes, which it did, Plaintiffs assert that they are entitled to due process protection and equal protection guaranteed under the Constitution, including but not limited to public defender service. *See* Compl. ¶¶60, 65-67, 80, 96-97. Deprivation of public defender service under the VAWA's enforcement scheme gives rise to Plaintiffs' constitutional claims under the Tucker Act.

Additionally, even if Congress is found to have properly exercised its power for the general welfare of the United States, Plaintiffs assert that they have been deprived of program services under the Act solely because of their gender. *See* Compl. ¶¶75-76, 110, 113. Because the program services are in part funded by Plaintiffs taxes, the discriminatory scheme of program eligibility also gives rise to Plaintiffs' constitutional claims under the Tucker Act. Upon information and belief, most or all class Plaintiffs have incurred $10,000 or less in damages allowing this Court to have jurisdiction. Pursuant to Rule 12(b)(6), Plaintiffs have made a short plain statement under the Tucker Act and the Motion must be denied.

F. Count V of the Complaint States a Claim for Common Law Violations.

The Supreme Court has held "it is . . . well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." *Bell v. Hood*, 327 U.S., at 684

(1946). "That damages may be obtained for injuries consequent upon a violation of the Fourth Amendment by federal officials should hardly seem a surprising proposition…Historically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty." *Bush v. Lucas*, 462 U.S. 367 (1983) citing *Nixon v. Condon*, 286 U.S. 73 (1932); *Nixon v. Herndon*, 273 U.S. 536, 540 (1927); *Swafford v. Templeton*, 185 U.S. 487 (1902); *Wiley v. Sinkler*, 179 U.S. 58 (1900).

"When Congress provides an alternative remedy, it may, of course, indicate its intent, by statutory language, by clear legislative history, or perhaps even by the statutory remedy itself, that the courts' power should not be exercised… In the absence of such a congressional directive, the federal courts must make the kind of remedial determination that is appropriate for a common-law tribunal, paying particular heed, however, to any special factors counselling hesitation before authorizing a new kind of federal litigation." *Bush* at 378.

In the Complaint Plaintiffs state the following: (1) the federal law is as overtly discriminatory; *See* Compl. ¶6, (2) Federal Defendants outsource the enforcement of the federal law to state actors and private actors; *See* Compl. ¶¶6 and 52-65, and (3) federal prosecutors and federal judges protect the enforcers, both state actors and private actors. *See* Compl. ¶¶100-101. For their injury, Plaintiffs have therefore made a short plain statement for a remedial determination by a common law court for Defendants' common law violations.

Conclusion

For the forgoing reasons, Plaintiffs request this Court deny Defendants Motion to Dismiss the Complaint.

WHEREFORE: Plaintiffs respectfully request that this Court deny Defendants Motion, and requests that this Court grant such other and further relief as this court deems appropriate.

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Respectfully Submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this November 12, 2019 a copy of the foregoing was electronically served via ECF:

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