Talton v. Mayes, 163 U.S. 376 (1896) The U.S. Constitution does not apply to tribes because the tribes' authority does not come from the U.S. Constitution, rather their inherent authority that pre-dates the U.S. Constitution.

Indian Civil Rights Act, 25 USC 1301 (1968) An act imposing most of the Bill of Rights on tribes.

Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978) The Indian Civil Rights Act is not a grant of jurisdiction to federal courts. Those with claims against a tribal government for civil rights violates must litigate in tribal court. The only federal court remedy is a writ of habeas corpus when criminally charged.

Poodry v. Tonawanda Band of Seneca Indians, 85 F.3d 874 (1st Cir. 1996). Five Seneca tribal members were found guilty of treason because they questioned the finances of the tribal government. They were disenrolled and banished from the reservation. The First Circuit held that banishment was a severe punishment, sufficient restaint on liberty to qualify as "detention" whcih would allow the court to review under the habeas corpus provision of the Indian Civil Rights Act.

U.S. v. Wadena, ___ F.3d ___ (8th Cir. 1998) (No. 96-4141) Rick Clark and Jerry Rawley, White Earth Chippewa officials were found guilty of tribal election fraud. They argued the federal government does not have jurisdiction to criminally charge them for election fraud because tribal elections are exclusiving within the jurisdiction of the tribe.

This case criminalized the ICRA.

The 8th Circuit's decision is below:

III. Jurisdictional Challenge to the Election Conspiracy Clark and Rawley do not challenge the sufficiency of the evidence to sustain their convictions relating to the election fraud, and the evidence of their guilt is overwhelming. However, both Clark and Rawley vigorously assert that the exercise of federal criminal jurisdiction over the conspiracy to commit election fraud is not authorized by Congress and seriously impinges upon tribal sovereignty. As such, they urge the election was within the exclusive jurisdiction of the Tribal Court. They conclude that under the principles enumerated in Quiver and Crow Dog, federal courts lack jurisdiction over matters such as tribal elections that relate to the internal affairs of the tribe.

The district court held that the conspiracy law under § 241 is a law of general applicability because the situs of the offense in this case, voter fraud is in no way an element of the crime. In other words, the district court's rationale was that Congress has declared any conspiracy which violates federally protected rights a crime regardless of where the offense occurs. And, as we have previously discussed, laws of general applicability "apply" with equal force when committed by a Native American on a reservation. See Part II, supra. Clark and Rawley also challenge federal jurisdiction on the ground that the tribe exists as an independent nation over which the federal government has no jurisdiction concerning a local tribal election. There is no question that Indian tribes are quasi-sovereigns and enjoy rights and privileges of self-government and local culture. However, the Supreme Court observed early on in Talton v. Mayes that while Indian Nations are "possessed of . . . attributes of local self government, when exercising their tribal functions, all such rights are subject to the supreme legislative authority of the United States." 163 U.S. 376, 384 (1896) (citing Cherokee Nation v. Southern Kansas Ry. Co., 135 U.S. 641 (1890)). In this regard, tribal sovereignty "exists only at the sufferance of Congress and is subject to complete defeasance." Wheeler, 435 U.S. at 323.

The Supreme Court emphasized the dominance of congressional authority over Indian tribes in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978), observing: "As the Court in Talton recognized . . . Congress has plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess." 436 U.S. at 56 (also citing United States v. Kagama, 118 U.S. 375, 379-81, 383-84 (1886); Cherokee Nation v. Hitchcock, 187 U.S. 294, 305-07 (1902)). The Santa Clara court went on to emphasize that the passage of the Indian Civil Rights Act, 25 U.S.C. §§ 1301-03 ("ICRA"), serves as an example of that authority. The Court summed up this legislation by observing: "In 25 U.S.C. § 1302, Congress acted to modify the effect of Talton and its progeny by imposing certain restrictions upon tribal governments similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment." 436 U.S. at 57.

The ICRA was passed with the declared purpose "to secur[e] for the American Indian the broad constitutional rights afforded to other Americans." Santa Clara, 436 U.S. at 61 (quoting S. Rep. No. 841, 90th Cong. 1st Sess. 5-6 (1967)). The passage of the ICRA resulted from congressional concern in the early 1960s that individual Native Americans had no constitutional rights under their tribal governments. See Alvin J. Ziontz, In Defense of Tribal Sovereignty: An Analysis of Judicial Error in Construction of the Indian Civil Rights Act, 20 S.D. L. Rev. 1, 1-2 (1975). The congressional subcommittee first considering the legislation "heard a great deal of testimony from Indians complaining of violations of constitutional rights by the governing bodies of Indian tribes." Id. at 2. These allegations included incidents such as harassment and detention of political dissidents, corruption of tribal courts, and notably election fraud. See Joseph de Raismes, The Indian Civil Rights Act of 1968 and the Pursuit of Responsible Tribal Self-Government, 20 S.D. L. Rev. 59, 73 (1975). Most commentators agree that in enacting the ICRA, Congress "sought to achieve a balance between individual rights of tribal members on the one hand and preservation of tribal autonomy, Indian customs, law and culture on the other." Ziontz, supra, at 2; see also Cohen, supra, at 666-69. Initially, a bill was contemplated to impose the same limitations on tribes as were imposed on the federal government in regard to civil rights. Cohen, supra, at 666? The end result was an act with only some of those restrictions.

Id. From this reading of the legislative history, it is clear that Congress was sensitive to the question of tribal sovereignty when drafting the ICRA.? Section 241 prohibits a conspiracy to deny any person the enjoyment of a right or privilege secured by the Constitution or laws of the United States. It is the government's position that the conspiracy under § 241 was specifically directed to a law of the United States, i.e., violation of § 1302 of the ICRA. Under this theory, we must first address whether § 241 specifically applies to fraud in a tribal election.

Citing an eighty-year-old case, United States v. Bathgate, 246 U.S. 220, 225 (1918), the defendants argue that federal election fraud statutes do not extend to fraud in a general state election, and therefore should not apply to a tribal election either. But since the Bathgate decision, the Supreme Court has construed § 241 to include all rights or privileges secured by the Constitution or laws of the United States. See United States v. Guest, 383 U.S. 745, 753 (1966)

(Section 241 protects equal protection rights under the Fourteenth Amendment.). More specifically, the court in Anderson v. United States, 417 U.S. 211, 226 (1974) stated that "[t]he specific intent required under § 241 is not the intent to change the outcome of a federal election, but rather the intent to have false votes cast. . . ." Subsequent to Anderson, the application of § 241 to fraud in non-federal elections has been endorsed by this circuit, as well as several others. See United States v. Townsley, 843 F.2d 1070, 1080 (8th Cir.), vacated in part on other grounds, 856 F.2d 1189 (8th Cir. 1988); United States v. Howard, 774 F.2d 838, 841 (7th Cir. 1985); United States v. Stollings, 501 F.2d 954, 955 (4th Cir. 1974).

In Townsley, our court specifically held that even though the objective of the conspiracy was to influence a local rather than federal election, that did not defeat the specific intent necessary to establish a conspiracy against the rights of citizens under §241.? 843 F.2d at 1080. The court stated: "Regardless of what our view might have been were we writing on a clean slate, it is now clear that `[t]he specific intent required under § 241 is not the intent to change the outcome of a federal election, but rather the intent to have false votes cast . . . .'" Id. (quoting Anderson, 417 U.S. at 226). In this case, Rawley and Clark were accused of conspiring to fraudulently cast ballots in a tribal election. Under Anderson, as long as the purpose of the conspiracy was the violation of a federal law, the conspiracy is unlawful under federal law. See 417 U.S. at 226. The specific question we must then address is whether the ICRA, as a law of the United States, contains a prohibition which allows enforcement of § 241 under general principles of conspiracy? law. The ICRA specifically proscribes a violation of the Tribe's equal protection laws, as well as other constitutional rights of the Tribe. See § 1302(8). Article XIII of the Constitution of the Minnesota Chippewa Tribe reads: All members of the Minnesota Chippewa Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, and no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States, including but not limited to freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law. (emphasis added). By direct incorporation, these rights are now explicitly protected by the ICRA. We hold they are enforceable under § 241, as a general federal law.? In addressing ballot-box stuffing in federal or state elections, the Seventh Circuit observed in United States v. Olinger, 759 F.2d 1293, 1303 (7th Cir. 1985): [T]he right of suffrage, whether in an election for state or federal office, is one that qualifies under the Equal Protection Clause of the Fourteenth Amendment for protection from impairment, "when such impairment resulted from dilution by a false tally, cf., United States v. Classic, 313 U.S. 299 (1941); or by a refusal to count votes from arbitrarily selected precincts, cf., United States v. Mosley, 238 U.S. 383 (1915), or by a stuffing of the ballot box, cf., Ex Parte Siebold, 100 U.S. 371 (1879); United States v. Saylor, 322 U.S. 385 (1944)." Baker v. Carr, 369 U.S. 186, 208 and 247-48 (1962). This was bluntly stated in Reynolds v. Sims, 377 U.S. 533, 554-55 (1964): "[T]he Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. . . . The right to vote can neither be denied outright, . . . nor diluted by ballotbox stuffing. . . .

We believe it is clear this protection against voter fraud has been carried over into the ICRA, as it is applies to the facts of this case. This court previously recognized the one-man-one-vote principle applies to tribal elections through the ICRA. See White Eagle v. One Feather, 478 F.2d 1311, 1314 (8th Cir. 1973); Daly v. United States, 483 F.2d 700, 704-05 (8th Cir. 1973); Means v. Wilson, 522 F.2d 833, 839 (8th Cir. 1975). The defendants urge that these cases have all been implicitly overruled by the Santa Clara decision. In Santa Clara, a female tribe member brought an action for injunctive and declaratory relief against the Pueblo tribal government, alleging that a Pueblo ordinance which denied tribal membership to children of female members who married outside the tribe was a violation of equal protection under the ICRA. 436 U.S. at 52-53. The Supreme Court found that suits against the tribe under the ICRA were barred by the tribe's sovereign immunity, because nothing on the face of the ICRA purported to subject the tribes to the jurisdiction of federal courts in civil actions for declaratory or injunctive relief. Id. at 58-59. Additionally, the Court found that the ICRA did not impliedly authorize a private right of action against the Pueblo government. Id. at 72.

There are several reasons why the Santa Clara ruling does not control this case. First, in the case at hand, the government is asserting jurisdiction under § 241, not under the ICRA. The only? reason the ICRA needs to be referenced at all in this case is to establish that a right to be free from fraud in a tribal election does indeed exist under the laws of the United States. There is nothing in the language of Santa Clara to indicate that the rights under the ICRA are nonexistent or in any way invalid. Instead, Santa Clara dealt with how those rights may be enforced, and concluded they could not be enforced through a private right of action, in a civil lawsuit. Nothing in Santa Clara addresses the U.S. government's right or obligation to assume criminal jurisdiction when one of its laws of generally applicability is violated.? Additionally, tribal immunity is not at□?□? issue in the present criminal case.

Second, in Santa Clara the Court was faced with a challenge to a duly enacted ordinance of the tribal government. In such a case, the threat to tribal sovereignty is great because a federal court would be asked to sit in judgment of legislation enacted by a legitimate tribal government. In this case, the question is whether jurisdiction can be asserted over the illegitimate, criminal action of fraud in a tribal election. Unlike Santa Clara, there is no challenge to the legitimate actions of the tribe or its representatives. The charge is directed toward the individual members of the RTC who conspired to deprive the members of the Band of their civil rights guaranteed by the ICRA? The Band's right to self-determination, which the court sought to protect in Santa Clara, is not being threatened by ensuring that voters are not defrauded. In fact, the Band's right to free and open elections is vindicated by the present criminal action.

Third, in Santa Clara, the Court stressed that tribal courts are available to vindicate rights created by the ICRA and are the appropriate forums to do so. 463 U.S. at 65. But again, this is stated in the context of a civil action. In a criminal context when the entire tribal system allegedly is controlled by a few corrupt individuals there is no effective tribal forum available to protect an individual tribal member's civil rights.

Finally, even if jurisdiction in this case was asserted under the ICRA, Santa Clara would not be dispositive, because the absence of a private right of action does not mean absence of criminal jurisdiction. Rawley argues that "no voter could be a victim of a § 241 conspiracy if that voter could not enforce his or her voting rights under federal law in a civil action in a federal court." Rawley Br. at 28. If by this the defendant means to imply that criminal jurisdiction cannot exist without a corresponding private right of action, his premise is incorrect. Courts repeatedly have held that there is no private right of action under § 241, even though the statute allows federal authorities to pursue criminal charges. See, e.g., Cok v. Cosentino, 876 F.2d 1, 2 (1st Cir. 1989) ("Only the United States as prosecutor can bring a complaint under 18 U.S.C. §§ 241-242 . . . These statutes do not give rise to a civil action for damages."); Lerch v. Boyer, 929 F. Supp. 319, 322 (N.D. Ind. 1996) (Federal criminal statute governing conspiracies against civil rights did not provide for private right of action). There are numerous other criminal statutes which the courts have found do not imply a private right of action, including the Securities and Exchange Act, see Central Bank v. First Interstate Bank, 511 U.S. 164, 190-91 (1994); the Ashurst-Sumners Act governing shipment of prisoner-made goods in interstate commerce, see McMaster v. Minnesota, 30 F.3d 976, 981-82 (8th Cir. 1994); the federal wire fraud statute, see Official Publications Inc. v. Kable News Co., 884 F.2d 664, 667 (2d Cir. 1989); and the Federal Elections Campaign Act, see Cort v. Ash, 422 U.S. 66, 79-84 (1975).

For these reasons, Clark and Rawley cannot rely on the Santa Clara decision to support their argument that federal jurisdiction under § 241 cannot be asserted. The decision regarding private? rights of action brought under the ICRA against a tribal government does not address the question of criminal jurisdiction asserted in this case. In Stone, this court recently recognized that tribal sovereignty is "necessarily limited" and "must not conflict with the . . . overriding sovereignty of the United States." 112 F.3d at 974 (quoting United States v. Sohappy, 770 F.2d 816, 819 (9th Cir. 1985)). "Federal laws of general applicability [such as § 241] `are applicable to the Indian unless there exists some treaty right which exempts the Indian from the operation of the particular statutes in question.'" Id. (quoting Burns, 529 F.2d at 117). No such treaty right to be free to conduct fraudulent elections against their people is asserted here by the defendants. Contrary to the Clark and Ramsey's argument, we find there is no reason why federal criminal jurisdiction over election fraud would work to undermine the sovereignty of the tribe or its? political integrity. First, no tribal custom or tradition is being threatened by the enforcement of criminal conspiracy laws. There is no tribal custom or tradition of the Band of fraudulently using the election system to maintain positions of power for a few corrupt individuals.

Second, as the Supreme Court stated in Santa Clara, tribal courts are the preferable forum to resolve most issues a ising out of the rights granted by the ICRA. 436 U.S. at 65-66. This allows legitimate tribal governments to shape their own internal policy and assert their right to self-determination, and at the same time provides individual Native Americans a forum to air their grievances. However, tribal members are not able to practice self-determination when, as is alleged here, a few corrupt individuals effectively control the entire tribal system. No purpose of tribal autonomy is served by allowing a corrupt, unrepresentative system to continue unabated.

Finally, it is relevant to note that tribal governments are dependent sovereigns not independent foreign ones. As part of this dependent status, the U.S. government serves as a trustee and has a direct responsibility as a trustee to protect the civil rights granted by Congress to the Native Americans living on the reservations. We believe failure of the United States to assert criminal jurisdiction over activity on a reservation when the tribal government no longer operates legitimately would be an abrogation of the U.S. government's trustee relationship with tribes such as the Chippewa. We thus conclude that Clark and Rawley may be prosecuted in federal court under § 241 because such conspiracy encompassed a violation of the ICRA, a law of the United States.