

## BOYS: Tribe says 3 youngsters belong, with it

From A-1

for the New Mexico-based American Indian Law Center, a policy and advocacy organization, said the act was created as a means for tribal survival.

Meanwhile, the Jenkinses contend they've already bonded with the boys since they've lived with them for the past two years. The Jenkinses also say they're related to two of the boys, and the jurisdictional question shouldn't matter in their case.

"I understand on the one hand that the Apaches want to keep their heritage," said Charles Jenkins, who works as a wine specialist at Spec's Liquor Store.

"But there's a greater issue here. We're risking the lives of three children. We've been the best alternative for them. I wouldn't say we're perfect. But when my wife brought that little baby home, that's when I said it's enough," he added.

Michelle Jenkins, who works for a local insurance firm, puts it more bluntly: "If it takes moving heaven and Earth, we're going to fight to keep them."

But Grossman is not so sure that the Jenkinses' contention of love is more important than cultural identity.

"Love doesn't overcome everything, unfortunately," said Grossman. "Some people have to understand where they come from and sometimes that need overcomes love."

But Rodolfo Mares, who represents the tribe, insists the issue is a political one — not a race question.

"When we're dealing with the placement of Indian children, we're not dealing with race," said Mares. "We're dealing with a political issue. We're talking about the continuation of Indian tribes."

The story of Mark, Michael and Matthew began in April 1993 when Harris County Children's Protective Services moved in and removed one of the boys from their mother's apartment in southwest Houston.

Yvette Johnson, the boys' biological mother, could not be reached for comment.

Johnson's lawyer, Miriam Riskin, would only say that her client "wants her children back. Right now she's in the process of getting herself together."

Johnson and her boyfriend Monterey White lived a life on

the edge, according to the Jenkinses, White's aunt and uncle.

When the burden of parenthood was too hard to handle, the couple, they often dropped the boys off with the Jenkinses. Michelle Jenkins said they've kept the boys on two occasions amounting to six months each.

According to Harris County CPS Director Judy Hay, in April Johnson settled into an apartment but shortly afterward left her son Matthew with a neighbor. Abandoning Matthew, she then left her two other sons with the Methodist Home for Children in Waco, Hay said.

Shirley Secrest, Michelle Jenkins' mother, said she remembers when Johnson lived at the Houston apartment. She said she as well as her daughter and son-in-law made efforts to help Johnson by providing her groceries. They also tried to get Johnson drug treatment, says Michelle Jenkins.

"I found them in that apartment, and I just couldn't stand it. There was nothing in that apartment except a mattress," said Secrest.

CPS then moved in and took emergency temporary custody of Matthew. CPS officials then learned that Matthew's brothers were in Waco and moved them to Houston. At that point, the Jenkinses requested custody of the boys and it was granted to them, Hay said. The boys have been in their care now for nearly two years.

The boys' biological father could not be reached for comment. However, his lawyer, Barry Hards, said White has requested the Jenkinses have custody of the boys. Hards also admits his client is not a responsible person.

"Monterey has a history of chemical dependency. It takes all he can muster to stay clean and out of jail," said Hards.

The fact that the boys' father has requested his two sons stay with the Jenkinses should allow the state courts to supersede, said the Jenkinses' lawyer, Steve McLaughlin, who works for the firm Fulbright & Jaworski.

McLaughlin decided to do the Jenkinses' case pro bono after he met them through a local child advocacy group called Justice for Children.

However, McLaughlin concedes the jurisdictional matter will be a battle in light of the strong federal law. But he's hop-

ing the fact that the children have never resided on the reservation will play into the equation.

"Those children are citizens of Texas and Texas state courts and agencies are obligated to protect those children and perhaps the tribe has overlooked that," said McLaughlin.

Meanwhile, Mares, who represents the tribe, said CPS and the state courts blatantly ignored the Indian Child Welfare Act.

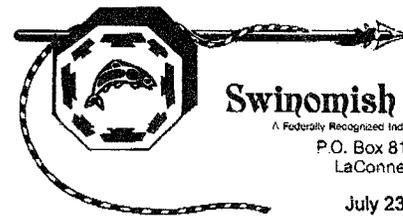
"There is no recognition of the state courts or agencies that this federal act even exists," said Mares.

But child advocacy groups, such as Justice for Children and the DeBoer Committee for Children's Rights, say the best interests of the child should be maintained.

Star Boone, a spokeswoman for the DeBoer Committee, said the children are already in a loving home.

"We advocate legislative and judicial reform so that children like Michael, Mark and Matthew will be protected from being used as pawns in the problems of jurisdiction," said Boone.

"Children are not property but human beings."



## Swinomish Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant To 25 U.S.C. § 476

P.O. Box 817 • 950 Moorage Way  
LaConner, Washington 98257

July 23, 1996

The Honorable John McCain  
Chairman  
Senate Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, DC 20510  
ATTN: Phil Baker-Shenk, General Counsel

Dear Chairman McCain:

We are most appreciative of the leadership and compassion you have displayed in working to ensure that the Indian Welfare Act Amendments of 1996 - S. 1962, provide Tribal governments with the jurisdiction and authority to protect the welfare of their children and families.

However, once again, Tribal families and ultimately Tribal cultures are facing a serious threat of extinction. The "existing Indian family" doctrine being used by certain state courts in adoption proceedings of Indian children will undo the excellent work you and the Committee have done thus far. We urge the Committee to once again come to the aid of our children by providing Tribal governments with the legal authority to deal with Indian children adoption proceedings for the child's best interest. Thus, we respectfully request that you consider including the following language in the legislation: "The provisions of this Title shall apply to all custody proceedings involving an Indian child as defined herein".

Again, thank you for helping us protect and ensure the perpetuation of the Indian family and Indian culture.

Sincerely,

Robert Joe, Sr.  
Chairman

cc: The Honorable Daniel K. Inouye, Ranking Minority, SCIA



Suite 500, 419 7th Street, N.W.  
Washington, D.C. 20004-2203 -- (202) 626-8800 (FAX) 737-9189 or 347-6907

(202) 626-8820

August 1, 1996

The Honorable Trent Lott  
Majority Leader  
United States Senate  
Washington, D.C. 20510

Dear Senator Lott:

The National Right to Life Committee (NRLC) urges you to oppose S. 1962, a bill sponsored by Senator McCain to make extensive revisions in the 1978 Indian Child Welfare Act (ICWA).

The ICWA has been applied in ways that ignore the best interests of the child, and in some cases the prospect of the law's application may have the effect of encouraging abortion. That is why NRLC endorsed the modest reforms contained in Title III of the House-passed adoption-reform bill, H.R. 3286, which would establish that for purposes of the ICWA, membership in a tribe is determined from the time of admission to a tribe and cannot be applied retroactively. The House-passed provision also establishes that the ICWA does not apply to voluntary adoptions in which neither birthparent has a significant tie to a tribe.

Unfortunately, Senator McCain's S. 1962 would greatly compound the existing problems. The National Council for Adoption has concluded:

**If S. 1962 becomes law, it would be the end of voluntary adoptions of children with any hint of Indian ancestry. No prudent agency or attorney is going to expose themselves to the risk of criminal prosecution under the bill because one or more of the over 500 Indian tribes may consider a child to be an Indian for the purposes of the ICWA— each tribe having its own unpublished and ever-changing definitions of membership and secret membership rolls. Senator Campbell recently indicated that some anthropologists suggest that up to 15 million U.S. citizens have some trace of Indian ancestry. Of these, an unknown number may have ancestry from more than one tribe.**

Therefore, NRLC urges no action on S. 1962 this year. With the well-being and even the very lives of so many children at stake, the maze of issues involved in reforming the ICWA deserve more careful consideration in the next Congress.

Sincerely,

Douglas Johnson  
Legislative Director



PORT GAMBLE S'KLALLAM TRIBE  
31912 Little Boston Road NE • Kingston, WA 98346

July 23, 1996

The Honorable John McCain  
Chairman  
Senate Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, DC 20510  
ATTN: Phil Baker-Shenk, General Counsel

Dear Chairman McCain:

In the mark-up of S. 1962, Indian Child Welfare Act Amendments of 1996, the Port Gamble S'Klallam Tribe ask that you consider inserting the following language which will remove the state court judges' ability to exempt ICWA in adoption proceedings of Indian children:

***"The provisions of this Title shall apply to all custody proceedings involving an Indian child as defined herein".***

Not to include the above language would approved the state courts usage of "Existing Indian Family Doctrine", which allows states the judicial authority to impose their discretion as to who is and who is not Indian; the intention of the Pryce amendment. We applaud the Committee for deleting this language in H.R. 3682, Adoption Promotion and Stability Act of 1996, and ask that you strongly consider inserting the above language to ensure the Indian adoption process will no longer be subjected to the prejudices of non-Indians judicial officers.

Sincerely,

Gerald J. Jones  
Chairman

cc: The Honorable Daniel Inouye, Ranking Minority, SCIA

LJMS1962.ICW



Catholic  
Charities  
USA

September 24, 1996

The Hon. John McCain, Chair  
Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman McCain:

On behalf of Catholic Charities USA's 1,400 local agencies and institutions, I am writing to commend you for your efforts to reform problems in the current system of adoption of Native American children. Last year, our agencies provided adoption services for 42,134 people.

After consultation with our agencies in "Indian Country," we have concluded that your bill to amend the Indian Child Welfare Act of 1978 (S. 1962) would improve the current rules for adoption of Native American children.

As you know, Catholic Charities USA's member agencies have a strong and unwavering commitment to the sanctity of every human life. Catholic Charities USA would not support any bill that we believe has potential for increasing abortions. We are convinced that your bill will make adoption a more attractive option than abortion to the women and families affected.

Please let us know how we can be helpful in assuring passage of your bill in this Congress.

Sincerely,

*Fred Kammer SJ*

Rev. Fred Kammer, SJ  
President

Episcopal Liaison  
The Most Reverend  
Joseph M. Sullivan

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August 17, 1996, Saturday, Late Edition - Final

SECTION: Section 1; Page 18; Column 5; Editorial Desk

LENGTH: 332 words

HEADLINE: Indian Adoptions Aren't Blocked by Law

BODY:

To the Editor:

Assertions by Representative Pete Geren that the Indian Child Welfare Act applies to anyone with the remotest ancestry and supplies tribes with veto power over off-reservation adoptions are wrong (letter, July 26)

Ancestry alone does not trigger the provisions of the law. The law applies only when a child is a member of an Indian tribe or is the child of a member and eligible for membership. The notion that a person whose family has had no contact with an Indian tribe for generations would suddenly become subject to the law is not reality.

Even if a child is covered by the law, a tribe cannot veto a placement sought by a birth parent. If the law applies, the tribe may intervene in the state court proceeding. It may seek to transfer the case to tribal court, but an objection by either birth parent would prevent that.

Even where a parent does not object, a state court may deny transfer for good cause. If the case remains in state court, the tribe may seek to apply the placement preferences in the law (extended family, tribal members and other Indian families, in that order), but the state court may place a child outside the preferences if it finds good cause to do so.

The Indian Child Welfare Act was enacted in response to a tragedy. Studies revealed that 25 percent to 30 percent of Indian children had been separated from their families and communities, usually without just cause, and placed mostly with non-Indian families. The act formalized the authority of tribes in the child welfare process in order to protect Indian children and provided procedural protections to families to prevent arbitrary removals and placements of Indian children.

The law is based upon a conclusion, supported by clinical evidence, that it is usually in an Indian child's best interest to retain a connection with his or her tribe and heritage.

BRADFORD R. KEELER  
Sisseton, S.D., Aug. 9, 1996

President, Association on  
American Indian Affairs

**CWLA** Child Welfare League of America, Inc.  
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September 10, 1996

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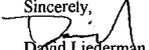
The Honorable John McCain, Chairman  
Committee on Indian Affairs  
United States Senate  
838 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator McCain:

I am writing in support of the amendments to the Indian Child Welfare Act outlined in both S. 1962 and H.R. 3828 as an alternative to earlier amendments outlined in H.R. 3286.

As you know the Child Welfare League of America is national organization that is committed to preserving, protecting, and promoting the well-being of children and families. As such we believe that the principles outlined in the Indian Child Welfare Act provide an appropriate and necessary framework for addressing the permanency and child welfare needs of Indian children. We likewise believe that the ICWA amendments proposed in S. 1962 and H.R.3828 support reasonable and effective improvements that will strengthen the implementation of ICWA in voluntary adoptions involving Indian children. First, they will help to strengthen the responsibility of agencies and individuals to conduct timely and time-limited notification to tribes and family members thereby promoting speedy movement toward adoption. Second, we believe that the amendments will discourage the dissolution of existing adoptions and provide greater security for Indian children and for their adoptive families.

We are encouraged that the process for developing these amendments has involved representatives from Indian Country and private adoption attorneys and that the proposed changes balance the needs of prospective adoptive parents and tribes while maintaining a focus on the permanency needs of Indian children. CWLA is optimistic that this bill will promote successful adoptions for Indian children who are in need of permanent families.

Sincerely,  
  
David Liederman  
Executive Director



Salt River  
**PIMA-MARICOPA INDIAN COMMUNITY**  
ROUTE 1, BOX 216 / SCOTTSDALE, ARIZONA 85256-8722 / PHONE (602) 874-8000

July 3, 1996

The Honorable Chairman John McCain  
838 Senate Hart Office Building  
Washington, D.C. 20215

Dear Chairman McCain:

On behalf of the Salt River Pima-Maricopa Indian Community, I would like to thank you for the leadership displayed by your committee to strike Title III of the House of Representatives approved "Adoption Promotion and Stability Act of 1996. Enclosed is a copy of our opposing arguments.

Enclosed you will also find a copy of the Salt River Pima-Maricopa Indian Community's Resolution No. SR-1703-96 entitled Supporting National Congress of American Indians Amendments to the Indian Child Welfare Act.

We are gravely concerned about the most recent Congressional deliberations on Indian affairs in a political climate which tends to abruptly abandon the historical, constitutional, and statutory foundation of Congress. Therefore, we strongly recommend no amendments to the Indian Child Welfare Act occur at this time, however, if there are current deliberations, we prefer consideration be given to the NCAI proposed amendments.

Again, thank you for your personal leadership and understanding of the negative ramifications to our children should amendments as those proposed by the Pryce Title III language be approved without tribal consultation or extensive Congressional deliberations.

Sincerely,  
  
Ivan Makil  
President

**SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY**

Route 1, Box 216  
Scottsdale, Arizona 85256

**RESOLUTION OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY SUPPORTING NATIONAL CONGRESS OF AMERICAN INDIANS AMENDMENTS TO THE INDIAN CHILD WELFARE ACT**

**RESOLUTION NUMBER: SR-1703-96**

**WHEREAS,** The United States House of Representatives approved the ill-conceived and poorly crafted Pryce Title III amendments to the Indian Child Welfare Act in the "Adoption, Promotion and Stability Act of 1996" (H.R. 3286), despite nationwide tribal opposition, including the Salt River Pima-Maricopa Indian Community; and

**WHEREAS,** on June 3-5, 1996, the National Congress of American Indians (NCAI) met and approved Resolution No. TLS-96-007A entitled Amendments to the Indian Child Welfare Act in response to House approved amendments; and

**WHEREAS,** on June 19, 1996, the Senate Committee on Indian Affairs approved a motion to strike Title III from the House approved "Adoption, Promotion and Stability Act of 1996" (H.R. 3286); and

**WHEREAS,** in light of the political climate which tends to abruptly abandon the historical, constitutional and statutory foundation of Congress in its recent deliberations on Indian Affairs, the Salt River Pima-Maricopa Indian Community prefers not to amend the Indian Child Welfare Act at this time, however, if there are current deliberations about amendments to this act, we prefer consideration be given to the NCAI proposed amendments.

**NOW, THEREFORE, BE IT RESOLVED** by the Salt River Pima-Maricopa Indian Community that it hereby supports and adopts the Indian Child Welfare Act Amendments proposed by the National Congress of American Indians.

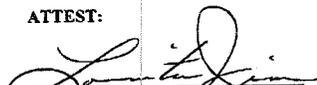
**CERTIFICATION**

Pursuant to the authority contained in Article VII, Section 1 (c) of the Constitution of the Salt River Pima-Maricopa Indian Community, ratified by the Tribe, February 28, 1990, and approved by the Secretary of the Interior, March 19, 1990, the foregoing resolution was adopted this 26th day of June, 1996, in a duly called meeting held by the Community Council in Salt River, Arizona at which a quorum of 9 members were present by a vote of 9 for, 0 opposed.

**SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY COUNCIL**

  
Ivan Makil, President

**ATTEST:**

  
Lonita Jim, Secretary

**LAW OFFICES  
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July 9, 1996

**HAND DELIVERED**

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Steve Heeley, Esquire  
Majority Staff Director  
Senate Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, D.C. 20510

Dear Steve:

We greatly appreciate the Committee's work in promoting amendments to the Indian Child Welfare Act to protect its fundamental principles. Along these lines, we urge the Committee to consider a clarifying amendment to 25 U.S.C. 1918 - the provision regarding jurisdiction in Public Law 280 states. We urge the Committee to amend that section to remove its current ambiguity, as set forth below.

Section 1918(a) permits those tribes whose reservations were made subject to Public Law 280 to reassume jurisdiction over child custody proceedings. The issue that needs to be clarified is whether a tribe under Public Law 280 maintains concurrent child custody jurisdiction over its own children, in the absence of a reassumption petition being granted under section 1918. Put differently, the question is whether Public Law 280 divested tribes of their concurrent authority over child custody matters.

Certainly there is no express language in Public Law 280 that strips tribes of their preexisting authority over child custody matters. Moreover, the Supreme Court has clearly ruled that Public Law 280 was a grant of jurisdiction to the states, but was not intended to divest the tribes of their authority. See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207-12 (1987); *Bryan v. Itasca County*, 426 U.S. 373, 379, 383-90 (1976). See also, *Walker v. Rushing*, 898 F.2d 672, 675 (8th Cir. 1990). In accordance with these rulings, the United States Court of Appeals for the Ninth

Steve Heeley, Esq.  
July 9, 1996  
Page 2

Circuit has held that Public Law 280 does not prevent tribes from exercising concurrent jurisdiction over child custody matters. Native Village of Venetie v. State of Alaska, 918 F.2d 797 (9th Cir. 1990). As the Ninth Circuit properly ruled, the reassumption provision in section 1918 permits tribes to reassume exclusive or referral jurisdiction under section 1911(a) and (b), but reassumption is not a condition to tribes exercising concurrent jurisdiction.

While the Ninth Circuit's ruling should have ended the matter, unfortunately that has not been the case. One state court has chosen to ignore the Ninth Circuit's ruling, and has construed Public Law 280 to remove all jurisdiction from tribes with regard to child custody matters. In the Matter of F.P., 843 P.2d 1214 (Alaska 1992). According to the Alaska Supreme Court's ruling, unless a petition is granted under section 1918, tribes have no authority at all to handle child custody proceedings involving their own children.

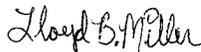
As a result of the Alaska court's ruling, Village custody actions regarding their own children are not being afforded full faith and credit, and state child custody proceedings involving Native children are not being transferred to the Villages. The current situation has significant real life consequences for a number of Native children and their Villages each year.

We have drafted proposed language to address this situation. Our draft would clarify that tribes under Public Law 280 retain concurrent jurisdiction over child custody proceedings, and that the reassumption provision of section 1918 is a mechanism for tribes to assume exclusive or referral jurisdiction under ICWA. A copy of our draft language is enclosed.

We appreciate your consideration of this matter. Please let us know if we may be of assistance to you.

Best regards.

Sincerely,



Lloyd Benton Miller  
William R. Perry  
Mary J. Pavel

Enclosures

LBM/WRP/MJP/slh

Proposed Amendments to 25 U.S.C. § 1918(a)

Any Indian tribe which became subject to concurrent State jurisdiction pursuant to the provision of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other federal law, may reassume exclusive or referral jurisdiction over child custody proceedings. Before any Indian tribe may reassume exclusive or referral jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

Explanation

This amendment clarifies that, consistent with applicable case law, Public Law 280 did not divest tribes of their concurrent jurisdiction over child custody matters involving Indians. The amendment reflects the interplay between Public Law 280 and ICWA, as set forth in the case of Native Village of Venetie I.R.A. Council v. Alaska, 918 F.2d 797 (9th Cir.1990).

## ALABAMA/QUASSARTE TRIBAL TOWN

P.O. BOX 537  
Henryetta, OK 74437  
Ph. 918-652-8708

September 11, 1996

Sen. John McCain  
United States Senate  
Committee On Indian Affairs  
Washington, DC 20510-6450

Mr. McCain:

I am writing regarding the National Right to Life Committee's stance on the passage of S. 1962. NRLC's attempt to try to correlate S. 1962 with abortion is outrageous. It has never been and will never be the Indian belief to terminate life before birth. As a matter of fact, Indian families are known for their ability to love and nurture children, their own, as well as extended family members and often children outside of their family. There are Indian families available to adopt Indian children and having worked in the social work field for twelve years, I can assure you the tribes make every effort to work with unmet mothers to ensure the child is matched with a caring family, if adoption is the mother's choice.

NRLC's interpretation of this bill is erroneous; the "Tulsa" agreement has nothing to do with encouraging abortions, we were simply trying to reach an agreement that is beneficial to our Indian children, namely to keep Indian children with Indian families where possible and exercise efforts to strengthen Indian families and maintain cultural integrity of Indian Nations. This agreement neither encourages nor condemns adoption, but rather deals with the issue of an already existing problem which involves non-Indians attempting to exercise jurisdiction over Indian adoptions.

I urge you to move forward with the passage of S. 1962 which will both protect tribal sovereignty and facilitate Indian adoptions.

Thank you for your continuing concern for the Indian people and your untiring efforts to help us protect our most valuable resources, our children.

Sincerely,

*Redeena Minyard*  
Redeena Minyard, Social Worker  
Indian Child Welfare  
Alabama Quassarte Tribal Town

The Honorable John McCain  
United States Senate  
Washington, DC 20510-2203

24 July 1996

Sir:

On behalf of the members of the Shingle Springs Rancheria I must express our dismay over the continued attacks on the Indian Child Welfare Act. I am also shocked at the arrogance and ignorance implicit in the position taken by those who seek to weaken the Act.

For centuries Indians were murdered, starved, and denied the practice of our customs and religions. Our children were taken to schools where they were forbidden to speak their languages and were taught that the values and beliefs of White society were superior to their own. Our inability or disinclination to accept this was said to show that they were failures. The pervasiveness of these assaults resulted in great numbers of Indians being scattered and confused - physically and culturally cutoff from their heritage.

To be sure some of these policies were thought to be in the Indian's best interest but, as noted in the House Report when ICWA was being framed, "One of the effects of our national paternalism has been to so alienate some Indian (parents) from their society that they abandon their children at hospitals or to welfare departments rather than entrust them to the care of relatives in the extended family." Too many of these abandoned children and other Indian children whose parent's rights were terminated were then taken by non-Indians and completely removed from their culture.

The very existence of Tribes became threatened by these overwhelming losses.

Finally, the Congress, recognizing that it 'has assumed responsibility for the protection and preservation of Indian tribes and their resources' passed the ICWA. Implicit in the Congress' goal of preserving Tribes is preserving their culture. Unfortunately the Re-location and Assimilation policies of one hundred and fifty years had shattered the cultural identity of many. With ICWA these people and Tribes were finally able to begin efforts to re-learn and rebuild what had been being torn apart for so long.

Now, after a mere eighteen years, some wish to punish those who don't seem Indian enough. Here is arrogance.

And here is ignorance: to not know that the ICWA was written as much for Tribes as for parents. In the Holyfield case the Supreme Court stated that the Supreme Court of Utah expressed this well, "The protection of this Tribal interest is at the core of the ICWA, which recognizes that the tribe has an interest in the child which is distinct from but on a parity with the interest of the parents." If this is understood the false doctrine of 'existing Indian family' has no validity on whether a child qualifies under the Indian Child Welfare Act. We urge you to denounce this spurious dogma.

We further urge you to support striking the reference to Public Law 280 from ICWA. The confusion this causes and the license state courts and agencies have taken to divest California tribes of jurisdiction over child custody proceedings undermines the Congressional intent.

Sincerely,

William David Murray, Sr.  
Chairperson

Alec John A-Hiokatoo  
ICWA Specialist

▲ SHINGLE SPRINGS RANCHERIA

P.O. BOX 1340, SHINGLE SPRINGS, CALIFORNIA 95882  
TELEPHONE (916) 676-8010



September 27, 1998

Dear Senator McCain,

I am contacting you wearing two hats...one of an adoptive parent of a son and daughter and the other as the National Legislative Director of the American Adoption Congress. I saw you on the Larry King Show and I'm glad to know you are an adoptive parent, also. I know that Bill #1982 passed in the Senate 9/28 and is expected to pass in the House today.

I am aware that there was a committee meeting with you and your Counsel on September 18, 1998 where Bill Pierce from the NCFA was in attendance with attorney Michael Bentzen, Doug Johnson (NRLC) and Jackie Ragan (also NLRC)

I truly hope that you and your colleagues have come to understand that Mr. Pierce does NOT speak for any majority of the adoption triad (adoptive parents, birth parents and adoptees). He represents, at most, less than 7% of private adoption agencies (total of over 1,550 in the U.S.) and NO public agencies. Of NCFA's current 109 agency members, only 38 are primary agencies - the remaining numbers are merely branches of those agencies. At least 50% of those agencies represent a particular religious view - Latter Day Saints/Mormon Church - and most advocate secrecy and sealed records in adoption. We believe that the lack of openness and honesty in adoption causes life-long and unnecessary anguish for millions of adopted adults as well as adopted children and their parents.

In his communication to you Mr. Pierce states, "we must decline to give you a list of all the agencies and attorneys who have concerns with your bill." This is a common Piercian play because, if the list were made public, it most likely would be embarrassingly short and very narrow in its viewpoint, as is the membership of his organization.

Bill Pierce tells you in his letter of September 19, that "NCFA labored with many others for more than six years to hammer out the details of the Uniform Adoption Act". That statement is partially true, because a good deal of the "labor" was the result of having to work over the continuing protests of organizations representing thousands of children, adoptees, birthparents, and adoptive parents. Today the UUA is in trouble because now those thousands of voices are not being ignored before legislative committees across the land. The UUA (as does NCFA) serves the interests of small but powerful, moneyed, and well-connected groups.

An amazing example of Mr. Pierce's favorite strategies is to take two unrelated phenomena and put them together as though one causes the other. His most current implication is that openness in adoption causes abortion. It is a fear-inspiring fantasy that seems to be believed. However, it bit the dust in a Tennessee Federal District Court Decision by Judge John T. Nixon on August 23, 1998. If you are not aware of this Federal Court case and the decision, I will be happy to furnish your office with details.

The vast majority of adoptees and birthparents have been opposed for years to what Mr. Pierce represents. Today those constituents are being joined by an ever-increasing population of adoptive parents who have come to realize that the best interests of their children involve openness and honesty in adoption and access to their records. We are not yet a high-powered lobby - but we hope that we can alert you and your colleagues that we are here, we are mobilizing and we are speaking out.

The days of Mr. Pierce and his kind are limited.

Sincerely, *Jane Nast*

Jane Nast, Legislative Director, American Adoption Congress  
3 Harding Terrace Morristown, NJ 07960-3252 201-267-98 Fax 201-267-3356



June 24, 1996

Mr. Steve Heeley  
Majority Staff Director  
Senate Indian Affairs Committee  
Fax: 224-5429

Dear Mr. Heeley,

I am writing to you regarding the hearings you are scheduling to look at the Indian Child Welfare Act. Specifically, regarding the House passed changes to that act in H.R. 3286.

The National Council For Adoption (NCFA) is a non-sectarian, non-profit organization which has worked to promote adoption and ethical practices and policies for 16 years.

NCFA has followed the difficulties many families and birthparents have encountered in trying to navigate ICWA as it is presently interpreted by the courts. We have spoken often with Representative Deborah Pryce as she has worked to correct ICWA.

Frankly, NCFA was surprised that we were not asked to testify regarding ICWA at the hearings you will hold this Wednesday. And, I wanted to be sure that you were aware of our desire to present a side of the ICWA story which may not have been adequately explained by those who are not in the adoption field.

I look forward to hearing from you at your earliest possible convenience and hope that all sides of the issue will be given a fair and open airing.

Sincerely,

William I. Pierce  
President

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September 19, 1996

Sen. John McCain  
SR-241  
Washington, DC 20510

Dear Sen. McCain:

Thank you for inviting us to meet with you yesterday. We appreciate the fact that you were so generous with your time. Thank you also for inviting the two adoption attorneys from the American Academy of Adoption Attorneys to be present, so we could have a candid discussion about our differences of opinion. I was pleased that Jane Gorman and Mark Gradstein confirmed that several of our concerns were also problems to them, although they believe the problems cannot be resolved because of the tribes' opposition while we believe the Congress should resolve them regardless of what the tribes desires might be.

I was happy that we finally had a chance to exchange views about ICWA and I look forward to the written response you mentioned would be coming. We look forward to receiving your written response to the many issue we have raised, including the proposed amendments we hope will be offered if your bill goes to the Senate floor.

I do wish that you had been able to stay with us a bit longer so that we could have gone through the list of concerns other Members of Congress, NCFA and other groups – including many adoption attorneys – have with your bill. I had hoped to explain why we believe our amendments are needed if your bill is to improve the current situation in regard to the Indian Child Welfare Act.

As you suggested, I will brief the others who oppose your bill on our meeting but, as I told Mr. Baker-Shenk, we must decline to give you a list of all the agencies and attorneys who have concerns with your bill. The fact is that at least one attorney, who is a member of the American Academy of Adoption Attorneys and who currently is representing clients who are in conflict with a tribe over an adoption, has told me that the tribe that is on the other side has attempted to pressure their law firm to withdraw from the case by

contacting other clients of the firm that the tribe has business dealings with, asking them to consider dropping the firm unless the firm withdraws from its efforts in opposition to the tribe. We cannot reveal the names, without their express permission, of those agencies and attorneys who could be subject to similar retribution from the tribes, were their support of our position to be revealed.

The issues are very clear, it seems to me. You clearly believe, as you said, that NCFA stands alone in the adoption community in opposition to your bill. Although being the only voice in opposition does not mean that one's position is wrong, the fact is that we are not alone. The American Academy of Adoption Attorneys, and its board's endorsement of your bill, does not represent "all the adoption attorneys," as you stated. It represents about 300, some of whom disagree with their organization's view. There are prominent adoption attorneys – in New York and elsewhere – who have written to you with their objections. The largest infertility support group in the U.S., RESOLVE, continues, as NCFA does, to call for true reform of ICWA in its alerts. A number of important public policy and advocacy organizations also support the proposition that ICWA needs to be reformed in ways that are different from what you propose.

I hope that you understood me clearly when I stated that, on balance, your bill would make the situation with ICWA worse. This is not to say that some of what is in your bill would not be better than what we now have in ICWA. The problem is the other provisions – mainly new departures – which overwhelm the positive elements.

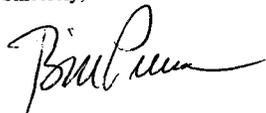
In terms of Jane Gorman's points, we will review them with our legal and agency advisors. In particular, we will see whether her contention that non-Indian birth mothers would not be covered under your bill is confirmed by others' reading. We do understand how much Jane Gorman hopes that your bill will help her settle the Rost case. Frankly, we see the scenario differently than Jane Gorman, even though we have joined the case and filed an amicus brief on the side of the Rosts.

I genuinely regret that I was unable to convince you about the serious nature of the provision allowing for court-enforced visitation and communication agreements, and the fact that we feel committed to the language of the Uniform Adoption Act in this regard. NCFA, like the American Academy of Adoption Attorneys, labored with many others for more than six years to hammer out the details of the Uniform Adoption Act before NCFA and the American Academy of Adoption Attorneys agreed to jointly endorse it. NCFA cannot back away from this provision that is so important, especially when there is nothing in your bill to require the judges to allow any such agreements only if it is in the best interests of the child.

We would have had much more to say, had you not needed to leave the meeting for a vote. Let me conclude by repeating what I said to you: we deeply appreciate the sincere belief that you have that your bill would make ICWA better. Your advisors and experts have told you that the bill is the best you can get from the tribes and that it constitutes a step forward. Our advisors and experts have told us that ICWA is deeply flawed and your

bill would not improve matters. You said, as you left your office, that you would be attempting to move your bill forward. For our part, we believe your controversial bill should not be approved by the Senate unless our perfecting amendments are accepted. We will continue to support those amendments being added because without them we believe your bill would worsen the situation with ICWA and therefore we will ask the Senate and the House to oppose it.

Sincerely,



William L. Pierce  
President

JM091996



DATE: August 9, 1996

RE: Proposed ICWA Amendments--Analysis for NCFA

#### INTRODUCTION

You requested an analysis of the main problems with ICWA, how they are addressed by the McCain bill, problems with the bill, cases that illustrate the problems with ICWA, status of the California case, and how the proposed Title III affects ICWA.

#### PROBLEMS WITH ICWA

The overarching problem with ICWA is its over-broad application to situations never intended by Congress. Congress stated specifically that the purpose of ICWA is to protect the best interests of Indian children and preserve the existence of Indian tribes by restricting the adoptive or foster placement of Indian children with non-Indian families. 25 USC §§ 1901-1902. The battle cry from the tribes has been that "the white man stole our land and our wealth, and now they are stealing our children." However, ICWA has been applied to children who have only a modicum of Indian blood and who have no connection with any Indian tribe or Indian culture. Indian tribes seek to extend the Act to all children with any Indian blood, regardless of prior contacts with the tribe or culture. The result is that the best interest of Indian children is ignored under the guise of preserving Indian tribes. Tribal interests have become paramount to those of the children. Tribes have asserted a virtual ownership over Indian children, superseding even the rights of the parents or child involved. If the federal government has any interest or authority in this area at all, it should be to protect the best interests of Indian children, not to blindly perpetuate Indian tribes at the expense of the children. The act sanctions and fosters racism under the pretext of preserving Indian tribes.

The specific problems, which all tend to lead to over-broad application of ICWA, are as follows:

1. Ambiguous and over-broad definition of "Indian child." Section 1903(4). Status as an Indian child turns on whether the child is a member of, or eligible for membership in, an Indian tribe. Tribal membership rules are either nonexistent, vague, or subject to changing interpretation and enforcement. Some tribes maintain written membership roles, while others claim that any person with any tribal blood is automatically a member.

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or at least eligible for membership, from birth. Tribes tend to expand their definition of membership to include as many children as possible, regardless of their actual affiliation with the tribe.

2. Allowing a tribe to establish or assert membership after a child has already been placed for adoption. This belated assertion of tribal membership can result in tearing the child away from an established family relationship. Status as an Indian child must be objectively determinable at birth, or at least before the child is placed and begins bonding with a new family.

3. Ambiguous definition of "parent" in the context of unwed parents. Section 1903(9). Is the child of an unwed Indian father an "Indian child" when the father has failed to establish paternity according to state law? "Parent" is defined as the parent of an "Indian child," but "Indian child" can be defined as the child of the member of a tribe. So the definitions become circular, one depending on the other. Can the child be an "Indian child" when the parent is not a "parent?" The definitions need to be clarified.

4. Unclear distinction between "involuntary" and "voluntary" proceeding. The tribe is entitled to notice of only an "involuntary proceeding." Section 1912(a). But does that include an adoption proceeding in which the mother consents but the father cannot be identified or located?

5. The standard for termination of parental rights in section 1912(f) creates a double standard for state actions that must also comply with state termination standards.

6. Section 1913 permits an Indian parent to withdraw adoption consent at any time prior to the final decree, or for up to two years if based on fraud. This creates terrible uncertainty for adoptive parents and disruption for the child. The consent should be irrevocable, as under state law, with the challenge period for fraud shortened to no more than six months.

7. The placement preferences under section 1915 fail to consider the best interests of the child. Moreover, the preferences should have no application to a child who has no prior ties to Indian culture. For example, the non-Indian mother of an Indian child should not be required to place her child with an Indian family when neither she nor the child have any ties to the tribe or Indian culture. The tribe should not be permitted to dictate placement of the child over the wishes and judgment of the child's parent. Placement should be determined by the needs and interests of the child, not by race.

8. ICWA has not accomplished its stated objectives. Instead, it has served only to complicate, delay, and even prevent the adoption process. The Act should be repealed, with the adoption of Indian children left to state law.

#### McCain BILL

The McCain bill addresses none of the problems with ICWA identified above. In fact, the McCain bill exacerbates the problems, as follows.

1. The proposed changes to section 1911 apparently expand the exclusive jurisdiction of Indian tribes over custody proceedings.

2. Proposed section 1913(a) imposes additional certification requirements for voluntary placements.

3. Proposed section 1913(b) further confirms and defines the right to revoke adoption consent long after placement.

4. Proposed section 1913(c) expands the requirements of notice to Indian tribes, requiring that tribes now be notified of all voluntary placements and terminations. Presumably, the purpose of such notification is to allow the tribe to intervene and override the wishes of the child's parents.

5. Proposed section 1913(d) imposes extensive requirements for the content of notice to tribes, including the names and address of adoptive parents, thus requiring a breach of state confidentiality laws and precluding closed adoptions.

6. Proposed section 1913(e) creates the right of tribes to intervene in voluntary adoption proceedings, presumably to contest the wishes of the child's parents. The tribe can intervene at any time, presumably even after a decree is entered. These provisions thus expand and strengthen tribal paternalism.

7. Proposed section 1913(h) authorizes a court to award visitation rights to birth parents and even the tribe, notwithstanding a final decree of adoption. The bill thus encourages open adoptions.

8. The bill also proposes stiff criminal sanctions for violations of the act, with penalties comparable to those for drug trafficking. The procedural pitfalls and heavy sanctions would simply end placement of Indian children because of the risks involved.

#### ILLUSTRATIVE ICWA CASES

The recent California case, *In re Bridget R.*, 49 Cal. Rptr. 2d 507 (App. 1996), illustrates some of the problems with ICWA. There, the parents of newborn twins voluntarily relinquished the twins for adoption, expressly denying any Indian heritage. Three months later, after learning of the birth and relinquishment, the paternal grandmother and the Pomo Indian tribe sought to block the adoption and return the twins to the extended family. The grandmother enrolled the biological father as a member of the tribe, even though he was only three-sixteenths Indian, had no significant

contact or relationship with the tribe, and lived several hundred miles from the reservation. The biological parents sought to revoke their adoption consent on the basis that the twins were Indian children, and the requirements of ICWA were not followed in taking the consents. The trial court granted the revocation and ordered the twins removed from the adoptive family and returned to the father's extended family. However, the court of appeals stayed the order pending appeal and ultimately reversed the trial court.

The court of appeals applied the "existing Indian family" doctrine to conclude that ICWA does not apply where the biological parents have no significant social, cultural or political relationship with the tribe. To apply ICWA under such facts would violate the due process rights of the children by disrupting the only family relationship they had known. *Id.* at 526. Application of ICWA would also violate the equal protection rights of the children by excluding them from the adoption rights of other children solely on the basis of race. *Id.* at 527-28. Such a broad application of ICWA would also violate the Indian Commerce Clause and the Tenth Amendment by impermissibly intruding on powers reserved to the states. *Id.* at 528-29. The court remanded for a factual determination of whether the twins were part of an existing Indian family. However, the court made clear that such a finding would be unlikely under the evidence in the record. For example, the father's lack of contact with the tribe or other family members in the tribe, as well as his denial of Indian heritage and total absorption in non-Indian culture indicated absence of an existing Indian family. Moreover, neither the belated tribal enrollment nor the tribal ties of other family members could satisfy the relationship required for application of ICWA. The determination of whether the children were removed from an existing Indian family must be made as of the time of relinquishment. *Id.* at 531. The court of appeals also held that, even if ICWA is found to apply, precluding the adoption, the adoptive parents would still be entitled to a custody hearing to determine whether a change of custody would be detrimental to the children. *Id.* at 534-35.

The California Supreme Court apparently denied review of *Bridget R.* on May 15, 1996.

Accordingly, the ultimate outcome in *Bridget R.* is good and correct, and ICWA need not be amended to change the result of that particular case. In any event, the McCain bill does nothing to prevent such cases in the future. If ICWA is to be amended, the purpose of such amendments should be to codify the result in *Bridget R.*, not to change the result.

#### EFFECT OF PROPOSED TITLE III AMENDMENTS

Title III of HR 3286, as passed by the House, is an apparent attempt to codify part of the holding in *Bridget R.* Proposed section 114(a) provides that ICWA does not apply to a child custody proceeding unless one of the child's parents "maintains significant social, cultural, or political affiliation with the Indian tribe of which either parent is a

member." Subsection (b) states that this factual determination of tribal affiliation is to be made as of the time of the custody proceeding. These changes are good, but the affiliation determination should be made, as held in *Bridget R.*, as of the time of relinquishment or the filing of a petition. 49 Cal. Rptr. 2d at 531. Otherwise, indicia of affiliation can be manufactured after-the-fact as a basis to remove the children from families to which they have already bonded.

The changes proposed in section 115 are also good. Subsection (a) requires the written consent of an adult to become enrolled in an Indian tribe, and subsection (b) states that admission to membership shall not be given retroactive effect. These changes would render immaterial the post-relinquishment maneuvers by the tribe and extended family in *Bridget R.*

#### CONCLUSION

In summary, ICWA has numerous problems, both as conceived and as applied. It is over-reaching, unnecessary legislation that empowers tribes to delay and prevent child placements without regard to the best interests of the children. The McCain bill does nothing to improve ICWA, and in fact would make matters worse. As illustrated by *Bridget R.*, some courts are attempting to correct the excesses in the act in accordance with its stated purposes. These judicial corrections should be codified. Title III of HR 3286 takes positive steps toward resolving some of the problems identified in *Bridget R.* and other cases.

AMENDMENTS TO ICWA

Following are some possible amendments to ICWA. The "[ ]" show deletions of current language. Underlined words are additions.

1. Section 1902- Insert "involuntary" before ". . . removal of Indian children from their families. . ." (Clarifies that it is the intent of Congress that ICWA applies only to involuntary proceedings.)

2. Section 1903 - (Definitions)- (4) "Indian child" means any unmarried person who is under eighteen, who resides or is domiciled on the reservation of an Indian tribe, and who is either, (a) a member of an Indian tribe or, (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe; (A residence or domiciliary standard would solve myriad of problems in connection with non-Indian birth mothers. If domicile becomes a consideration, there probably wouldn't be a need for amendments 3, 4 or 5 below.)

3. Section 1903 - (Definitions) - (4) "Indian child" means any unmarried person who is under age eighteen, who resides or is domiciled on the reservation of an Indian tribe, and who is either, (a) [a] an enrolled member of an Indian tribe or, (b) is eligible for enrollment [membership] in an Indian tribe and is the biological child of an enrolled [a] member of an Indian tribe. [;] It does not include a child who is born outside of marriage to a birth mother who is not an enrolled member of an Indian tribe where paternity of the child has not been established under state law. In cases where a child is placed for adoption, the determination of whether the child is an Indian child shall be made as of the date the child is placed in the prospective adoptive home. (This is an alternative to #2 above. It clarifies current law that ICWA should not apply in cases where the birthmother of an out of wedlock child is not an Indian and the father has not established paternity. If the Indian father does not have any standing or rights, the tribe should not have any rights either. The law that is in effect at the time of placement, relinquishment etc., should govern the adoption proceeding. This is only common sense.)

4. Section 1903 - (Definitions) - (3) "Indian" means any person who is an enrolled [a] member of an Indian tribe. . . (Some tribes try to get around ICWA by trying to distinguish between membership and enrollment. It is hard enough to understand a tribe's enrollment policies, let alone some unwritten "membership" policies.)

5. Section 1903 - (Definitions) - (9) "Parent" means. . .It does not include the unwed father where paternity has not been [acknowledged or] established under state law, [;] or a non-Indian mother of a child born outside of marriage where the paternity has not been established under state law. (ICWA should

not apply to a non-Indian mother where paternity has not been established under state law. If the Indian father does not have any rights, the ICWA relinquishment procedures etc., should not apply to non-Indian birth mothers. The term "acknowledged" in the current law is too vague. Adoption law must be clear and certain.)

6. Section 1913 - "Where any Indian parent or Indian child voluntarily consents. . ." (Clarifies that ICWA procedures don't apply to non-Indian, i.e., why should a non-Indian be required to always appear before a court for certification that the non-Indian speaks English etc.)

7. Section 1915 (a) - "In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; [or] (3) other Indian families [.] or any other family. The best interest of the child shall be considered "good cause" in applying these preferences. (This amendment doesn't need explanation, however I suspect the Indian community will resist. It will be interesting to hear why tribal interest should override the child's best interest.

8. Section 1915(c) - "In the case of placement under (a) or (b) of this section, . . . [Where appropriate, the preference of the Indian child or parent shall be considered: provided, that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such a desire in applying the preferences.] The preference of the Indian child or parent, shall be deemed to be "good cause" for purposes of this Section. The child's best interest shall also be deemed to be "good cause" for purposes of this Section. (This amendment protects the fundamental rights of parents, whether they are Indian or non-Indian. Particularly in the case of the non-Indian, why would a tribal interest override the parent's interest? It also seems fundamentally wrong that an Indian should lose his or her fundamental rights with regard to their children because of their race.)

9. A new part needs to be added to Section 1903 (Definitions) which reads: "Tribal membership and enrollment. Although the intent of Congress is not to interfere with the right of a tribe to decide and to designate, for "tribal purposes," which individuals may or may not qualify for membership and enrollment in the tribe, for purposes of the Indian Child Welfare Act and its proper implementation, it is necessary for a tribe's membership and enrollment information to be published so as to be available for inspection by the general public, including attorneys representing persons who may come under the purview of the Indian Child Welfare Act. Therefore, for purposes of the Indian Child Welfare Act, compliance shall be measured by

meeting, on the date of the signing of relinquishment papers, those requirements which are in effect because as of that date a tribe has published in English in the Federal Register a copy of its current procedures for membership and enrollment, along with a listing of those individuals who are currently enrolled in the tribe. If a tribe has not published in the Federal Register the required information, for purposes of the Indian Child Welfare Act, that tribe shall not be informed of the proposed placement and that tribe shall have no standing under the Indian Child Welfare Act."

(No one can be expected to comply with non-published and non-defined requirements. Nor can one check to see if a relative is an enrolled member of a tribe unless the tribes agree to publish the names of those who are enrolled members. This change would simply respond to the concerns raised, including during the hearings process, that tribes are not making it possible for people to engage in good-faith compliance with the Act.)

10. A new section needs to be added to provide for the recognition of the right of individuals to resign from tribal membership or to have their names deleted from the list of enrolled members. This is a right to disaffiliate or expatriate oneself through attrition, through assimilation over time or through a mere formal resignation. It is a clear principle of law that individuals should not be classified without their acquiescence. The new language should read: "Notwithstanding any other provision of the Indian Child Welfare Act, nothing in the Act shall be read to prevent an individual from resigning from tribal membership or removing their names from the list of those who are enrolled members."

11. During Senate hearings, the Department of Justice testified concerning Justice's views about making certain acts a criminal offense. In light of that testimony, where Justice said that existing penalties were sufficient, the following changes should be made: "Sec. 114 (a) shall be amended by deleting the words "...a criminal sanction under subsection (b)..." and inserting in lieu thereof the words "...the sanctions currently existing in the United States Code..." Sec. 114 (b) shall be deleted."

12. S. 1962 would provide for a radical departure from the recommendations of the National Conference of Commissioners on Uniform State Law (NCCUSL) regarding an enforceable right of visitation in a non-relative adoption. According to the written statement and the testimony of Jane Gorman, an attorney for the appeal being filed on behalf of the Rost twins, this change may make it possible for her to settle her case. Ms. Gorman has said that this change is needed because the tribe does not trust the Rost family to keep its word about visitation and communication. Since the case is currently on appeal, and at this point the highest court to rule has ruled in favor of the Rost family, it is by no means clear that there is any need to negotiate on behalf of the Rost twins. Even if such negotiation were seen as necessary because the tribe had won at the highest court level to

hear the case, the tribes themselves have said that the children will not be removed from the custody of the Rosts. Therefore, no such negotiation is necessary. In the event that such negotiation were necessary, it seems improper to put in jeopardy many other cases involving tribes and ICWA in order to settle a case involving two children. Further, it seems highly questionable whether ICWA in the future should be changed so as to imperil the adoption choices for as many as 1,500 children of Indian heritage each year in exchange for the one-time rescue of two children from the legal hostage situation imposed by the Pomo. NCCUSL debated and considered such an approach and decided against it. The Uniform Adoption Act does not allow such a provision, and neither should such a drastic change be put in place for ICWA. The following change should therefore be made: "Delete the language in the new Section 103 (h)."

13. If Section 103 (h) cannot be deleted by amending S. 1962, then there are two alternatives. The first alternative is to allow such enforceable visitation and communication agreements in the case of relative adoptions, as follows: "Delete the language in the new Section 103 (h) and insert in lieu thereof the following: VISITATION AGREEMENT AND ORDER (1) Upon the request of the petitioner in a proceeding for adoption of a minor Indian stepchild, the court shall review a written agreement that permits another individual to visit or communicate with the minor after the decree of adoption becomes final, which must be signed by the individual, the petitioner, the petitioner's spouse, the Indian minor if 12 years of age or older, and if an agency placed the Indian minor for adoption, an authorized employee of the agency. (2) The court may enter an order approving the agreement only upon determining that the agreement is in the best interest of the minor Indian adoptee. In making this determination, the court shall consider: (a) the preference of the Indian minor, if the minor is mature enough to express a preference; (b) any special needs of the Indian minor and how they would be affected by performance of the agreement; (c) the length and quality of any existing relationship between the Indian minor and the individual who would be entitled to visit or communicate and the likely effect on the Indian minor of allowing this relationship to continue; (d) the specific terms of the agreement and the likelihood that the parties to the agreement will cooperate in performing its terms; (e) the recommendation of the Indian minor's guardian ad litem, lawyer, social worker, or other counselor; and (f) any other factor relevant to the best interest of the Indian minor. (3) In addition to any agreement approved pursuant to subsections (1) and (2), the court may approve the continuation of an existing order or issue a new order permitting the Indian minor adoptee's former parent, grandparent, or sibling to visit or communicate with the Indian minor if: (a) the grandparent is the parent of a deceased parent of the Indian minor or the parent of the Indian adoptee's parent whose parental relationship to the Indian minor is terminated by the decree of adoption; (b) the former parent, guardian, or sibling requests that an existing order be permitted to survive the decree of

adoption or that a new order be issued; (c) the court determines that the requested visitation or communication is in the best interest of the Indian minor. (4) in making a determination under subsection (3) (c), the court shall consider the factors listed in subsection (2) and any objections to the requested order by the adoptive stepparent and the stepparent's spouse; (5) An order issued under this section may be enforced in a civil action only if the court finds that enforcement is in the best interest of a minor Indian adoptee. (6) An order issued under this section may not be modified unless the court finds that modification is in the best interest of a minor Indian adoptee and: (a) the individuals subject to the order request the modification; or (b) exceptional circumstances arising since the order was issued justify the modification. (7) Failure to comply with the terms of an order approved under this section or with any other agreement for visitation or communication is not a ground for revoking, setting aside, or otherwise challenging the validity of a consent, relinquishment, or adoption pertaining to a minor Indian stepchild, and the validity of the consent, relinquishment, and adoption is not affected by any later action to enforce, modify, or set aside the order or agreement."

The second alternative is to delete the words from the above language pertaining to stepchild or relative adoption from the proposed amendment. This would at least meet the concerns of Joan Hollinger and others that the best interest of the child be referenced in the section.

icwaamen.ame



July 15, 1996

Sen. John McCain, Chairman  
Senate Committee on Indian Affairs  
Washington, D. C.

Dear Chairman McCain:

As I am sure you know from your Counsel, our organization is very interested in the Indian Child Welfare Act (ICWA). That was why we sought to testify before your Committee.

Our organization has members all across the U.S. and has contacts with many non-profit adoption agencies in addition to our members with long experience in dealing with Native American issues. Based on our analysis of the issues, we were and remain a strong supporter of the goals of Title III of H.R. 3286, which is the result of the efforts of Rep. Pryce and others in the House to improve the ICWA. We strongly supported Title III, which your Committee has struck from H.R. 3286.

Although it would appear that the views of our organization differ significantly from yours and the majority of your Committee, we believe that it is important to stay in communication so that as you work on your bill and prepare for markup, you are aware of our concerns.

Our review of the draft bill that you circulated last week, along with the accompanying materials, is what prompts this letter. From your comments in the Committee hearing and your letter to potential co-sponsors, it seems clear that you have a genuine desire to reach a reasonable compromise on ICWA and, at the same time, to address the heart-rending cases related to ICWA that have been brought to the attention of the American public.

The draft bill which we saw does not solve the problems that nearly all agree exist with ICWA. The bill, in our view, does not respond to the concerns raised in your recent Committee hearing by those who support the general thrust of the tribes' proposal. The bill certainly does not represent real compromise between what the tribes want and what the adoption community wants, because the American Academy of Adoption Attorneys, important and involved as that group is, does not speak for the adoption community or even all of the attorneys who are actively involved in adoption practice. The bill would, in the view of some of the agencies and attorneys we have consulted, essentially end any possibility for the non-relative, voluntary adoption of any child with Native American blood. It is not even certain,

despite the hopeful words of Jane Gorman, that enacting a bill that meets the tribes' conditions -- including court-enforced visitation and communication -- would settle the Rost case.

Indeed, some of the questions we have received have been focused on the Rost case and we have asked Senators and their aides to carefully look at the facts before endorsing a piece of legislation that purportedly would allow the Rost case to settle.

Presently, the Rost twins are with their adoptive parents. As we understand it, the highest California court to hand down a decision has ruled for the Rost family. The tribes may appeal and a higher court may eventually rule against the Rosts.

But even then, based on our understanding of what tribal officials have said, what is at stake is not custody of the twin girls. Native American officials have said that they do not wish to disturb the lives of the twins by removing them at this late stage from the only parents they have ever known.

So, what is really at issue is whether the Rosts will be able to be the twins' adoptive family under law or whether they will be guardians or have some other permanent custodial status. Jane Gorman, in her testimony before your Committee, seemed to suggest that the Pomo were discussing visitation and communication arrangements but the Pomo did not trust the Rost family to keep its word. Thus, Jane Gorman said, the tribes want court-enforced visitation and communication written into ICWA. We believe, on the other hand, that the position taken by the Uniform Adoption Act on court-enforced visitation, limiting to step-parent adoptions only and then only if the best interests of the child or children are carefully examined, is the preferred stance. We would also point out that the American Academy of Adoption Attorneys, like our organization, is on record as endorsing the Uniform Adoption Act.

All of us, whether adoptive parents or not, can feel empathy for the torture the Rost family is going through. That is why our organization can understand why some in Congress, and perhaps your Committee, are considering accepting ICWA amendments which appear to have the effect of a private bill, because the Rost twins would be rescued.

The concern that our organization and others have are several.

First, is it appropriate to use a massive re-write of ICWA to solve the problems presented by any one case if, in so doing, the result would be to endanger tens of thousands of other children and families who are being or may in the future be confronted by ICWA problems? We think not, much as we sympathize with the Rost situation.

Second, is it appropriate for the same attorney who is representing the Rost family in their appeal to be negotiating with the tribes and the Congress, in effect pitting the current and legitimate interests of her clients, the Rosts, against thousands of future potential clients? We think not. We believe this debate about ICWA would be less muddled if Jane Gorman were speaking solely as one representing the Rosts as a private attorney, not mixing up her roles as litigator and negotiator on behalf of AAAA and other groups.

Third, is it necessary to pass any new laws to solve the Rost situation? As we understand it, the children will be remaining with the Rosts. What is at issue is whether there will be visitation and communication, what the nature of that visitation and communication will be, and whether it is court-enforced. A solution will be found to the Rost case that will allow the twins to be reared by the only parents they have ever known without any action by the Congress.

Finally, there is the question of amending ICWA itself. Here, there is, as you know, intense debate and ongoing conflict. The Committees of jurisdiction have generally had one view, while many others -- including the majority of those who voted in the House -- have had another. The result has been a hearings process in both the House and the Senate that has been very unbalanced. To the extent that a record has been established, it is extremely contradictory, as the House floor debate reflects.

ICWA is one of the most complex laws Congress deals with in the family law arena. Those who support it "as is," and from your hearing it would appear this includes many of the tribes, said in your hearing that they would just as soon leave ICWA alone this year. Those who see the current debate, spurred largely by interest in the Rost twins and similar high-profile cases, as providing the opportunity to change ICWA are intrigued. Some among the tribes see this as the rare opportunity to broaden ICWA's scope and to achieve changes tribes have long sought. Others among the adoption community see this as the chance to narrow ICWA's scope so that it works better for children and for parents who voluntarily wish to place their children for adoption. Still others, and this number is growing, question ICWA's very existence and want ICWA repealed.

Congress has very few days left before it goes out of session. Given the complexity of the issues surrounding ICWA and the strongly-held views of key Members like you, it would appear that any legislation that would be acceptable to the tribes and to you would not be acceptable to many of us in the adoption community -- and many in Congress. On the other hand, if the Senate were to take the same action as the House and push through Title III, the Administration has signalled that it has objections and the bill (either as a stand-alone piece of legislation or along with the

rest of H.R. 3286) could earn a Presidential veto.

In this regard, you said in your hearing and we have heard general agreement that the debate over ICWA should not threaten the viability of the non-ICWA portions of H.R. 3286. Putting something this controversial on a bill that has broad bipartisan support and the endorsement of the President seems ill-advised to us.

All this leads me to conclude that there is no possibility of achieving a reasonable compromise on ICWA in the time remaining in this Congress. Those who want ICWA's focus to be narrowed cannot achieve their goal because of a probable Presidential veto. Those who want ICWA's focus broadened cannot get a bill through Congress. Therefore, since the bill is probably not needed to solve the matter of custody in the Rost case, the best course of action seems to be to revisit this issue in the next Congress, when there is adequate time for several days of hearings on both sides of the Hill so that all of the witnesses who desire to testify -- both those hundreds from the tribes that you mentioned in your hearing and those of us who have differing views -- can be heard.

I respectfully suggest that this approach would save a great deal of time, expense and struggle.

We would be pleased to speak with you or members of your staff about these issues at any time, either by phone or in person. Meanwhile, I am sure you understand that in our advocacy efforts, pending any possible mutually-acceptable compromise between the tribes' position and our position, on July 18 I will be seeking continued authority from my Board to work to block any legislation that does not properly refocus ICWA.

Sincerely,



William Pierce  
President

cc: Board of Directors, National Council For Adoption

WP/ms

jmc71596

4



July 25, 1996

Sen. John McCain (R-AZ)  
by fax

Dear Sen. McCain:

A July 25 piece from National Journal states the following: "How it [S. 1962] will move through Congress is still a question, however. The Molinari adoption bill is awaiting senate floor action, Baker-Shenk said, if it begins to move, McCain may try to attach his bill to it. That provision would then have to be reconciled with the House version in conference."

If this news article accurately reflects what Mr. Baker-Shenk said, and if Mr. Baker-Shenk is correct in saying that you may try to attach S. 1962 to H.R. 3286, then that is in direct contradiction to what you said in the hearing you held in Indian Affairs. You said then that although you strongly supported the tribes' amendments, you would do nothing to hinder H.R. 3286 from passing. Rep. Pryce said essentially the same thing.

S. 1962, despite the claims by its supporters to be "non-controversial" and a "compromise" is neither and if you try to attach it to H.R. 3286, you will almost certainly spark a lengthy debate in the Senate. Our organization knows of at least 15 proposed amendments, which we have provided comments on to those in the Senate who do not support S. 1962. Those who disagree with S. 1962 will insist on time to debate their amendments fully and to have a roll call vote on each amendment.

Further, if H.R. 3286 should pass the Senate with S. 1962 as reported out of your Committee, it will go to a conference with Title III of the House bill, which is diametrically opposed, as you, the tribes and every other person who has been following this debate knows. The upshot is that the conference is likely to get hung up.

Adding S. 1962 to H.R. 3286 would constitute a reversal of your previous statement and could very well doom H.R. 3286, because our organization, among others, cannot and will not support any legislative package, even one we desire as much as H.R. 3286, if the price is to further erode basic rights of birth parents and U.S. citizens in favor of tribal "ownership" of children. I respectfully ask you to immediately clarify your position with the media and with us.

Sincerely,



William Pierce, President

jmc72596

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Testimony before the Committee on Indian Affairs  
United States Senate  
June 26, 1996

Dear Senator McCain and Members of the Committee:

Pursuant to your cordial invitation, please accept the following remarks as my abbreviated testimony relative to proposed amendments to the Indian Child Welfare Act of 1978. Due to the relative short notice and prior commitments, I deeply regret that I will be able neither to personally present my testimony nor to provide in depth commentary. Nevertheless, I do want to take this opportunity to provide testimony about what I regard as the most problematic and potentially deleterious amendments as passed by the House of Representatives.

My name is Frank Pommersheim and I am a Professor of Law at the University of South Dakota School of Law where I am a long-time teacher of Indian law. I am a well-known Indian law scholar and also serve as Chief Justice of the Cheyenne River Sioux Tribal Court of Appeals and an Associate Justice on the Rosebud Sioux Supreme Court. As a result of these experiences, I have a wide-ranging understanding both as a matter of policy and practice concerning the Indian Child Welfare Act of 1978.

Title III of H.R. 3288, the "Adoption Promotion and Stability Act of 1996", contains several ill-defined proposed amendments that, if passed, will severely gut and eviscerate the Indian Child Welfare Act. The most egregious of these is the attempt in Sec. 301 to create a limitation on the coverage of the statute by requiring that "at least one of the child's biological parents maintains significant social, cultural, or political affiliation with the Indian tribe of which either parent is a member."

The problems here are manifold. Let me briefly discuss two of them. Without defining "significant social, cultural, or political affiliation," there will only be interminable litigation about the proposed language's scope and meaning. This likely delay and uncertainty cannot benefit any Indian child or party involved in a child custody proceeding under the Act. More broadly, this proposed limitation completely undermines the thrust of the Indian Child Welfare Act to protect Indian children within the context of their being members (or eligible for membership) in a tribe. This overriding tribal interest ought not to be made contingent on the "significant social, cultural, or political affiliation with the Indian tribe" of a parent.

As noted in the original congressional findings:

"There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe." 25 USC § 1901 (3)

This human tribal resource will be placed at substantial risk if its identity and fate is subject to the over-broad criteria to determine parental involvement with the tribe. Indeed, this is the very same analysis rejected by the Supreme Court in Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989):

Tribal jurisdiction under § 1911(a) was not meant to be defeated by the actions of individual members of the tribe, for Congress was concerned not solely about the interests of Indian children and families, but also about the impact on the tribes themselves.

The tribal interest is a primary tenet of the Indian Child Welfare Act of 1978 and should not be so heedlessly or thoughtlessly dislodged.

Equally problematical is the attempt in proposed Sec. 302 to limit and set restrictions on a tribe's ability to determine membership requirements (e.g., children 18 or older must consent, tribal membership is strictly prospective in nature). The right to determine membership is essential to tribal sovereignty and ought not be displaced by Congress. As noted by the U.S. Supreme Court in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978): "A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community."

These proposed amendments, whether advertently or inadvertently, seek to improperly invade tribal sovereignty and to upset the already proper balance established by the U.S. Congress and confirmed by the U.S. Supreme Court in harmonizing the interests of Indian children, their parents, and their tribes. The proposed amendments appear to seek to advance the potential for Indian children to be adopted by non-Indians and everything else be damned in the process. This is, once again, repugnantly redolent of too much of U.S.-Indian relations--as scholars Jack Trope and Walter Echo-Hawk have noted in another context--whether it be land, or sacred objects and cultural artifacts or as here Indian children as a "one-way transfer of Indian property to non-Indian ownership." That there are important issues to discuss in the area of the adoption of Indian children is certainly not to be denied. Unfortunately, these proposed amendments eschew discussion and

demonstrate little, if any, understanding of the tribal interests involved. The Congress--and the Indian Child Welfare Act--must remain a bulwark against such potential harm.

Again, please accept my sincere thanks for the opportunity to testify on these important matters.

Respectfully submitted,



Frank Pommersheim  
Professor of Law

FP:cwh



Ferrell H. Secakuku  
CHAIRMAN

Wayne Taylor, Jr.  
VICE-CHAIRMAN

July 31, 1986

BY FACSIMILE

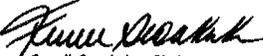
The Honorable John McCain  
United States Senate  
111 Russell Senate Office Bldg.  
Washington, D.C. 20510

Dear Senator McCain:

The Hopi Tribe reluctantly supports, with minor exception, S. 1962, a bill to amend the Indian Child Welfare Act. The purpose of the bill is to achieve greater speed and certainty in adoption proceedings involving Indian children by restricting the time in which an Indian tribe or family may intervene in adoption proceedings involving an Indian child. The Hopi Tribe believes that the bill's thirty-day time-frame for intervention in adoption and termination of parental right proceedings is unduly restrictive and would only encourage Indian tribes to intervene automatically to preserve their options. The Hopi Tribe believes that a more reasonable time-frame for intervention would be sixty (60) days. This would allow an Indian tribe or family time to investigate the merits of intervention and would promote deliberate rather than automatic intervention. With this amendment, the Hopi Tribe lends it support to S. 1962.

Sincerely,

THE HOPI TRIBE



Ferrell Secakuku, Chairman  
Chief Executive Officer

June 24, 1996

Chairman Senator McCain  
Senate Indian Affairs Committee  
Senate Hart Building, 838  
2nd and C Streets, NE  
Washington, DC 20510

Dear Senator Chairman McCain,

We understand that the SIAC voted to strike Title III from the adoption tax credit bill. We thank you for your support and work with this committee to protect tribal sovereignty in future legislation concerning the Indian Child Welfare Act (ICWA).

We would like our letter to be included in the record of the SIAC hearing on June 26, 1996. We want to show our support to the Committee and for the tribes who have worked together to draft alternative amendments to the ICWA.

Thank you for your leadership on this important issue.

Sincerely,



Melissa D. Shirk  
Legislative Advocate for  
Native American Affairs  
Friends Committee on National Legislation

June 24, 1996

Chairman Senator McCain  
Senate Indian Affairs Committee  
Senate Hart Building, 838  
2nd and C Streets, NE  
Washington, DC 20510

Dear Senator Chairman McCain,

As members of the Washington interfaith community, we are writing to thank you for holding a hearing on proposed amendments to the Indian Child Welfare Act on June 26.

The Indian Child Welfare Act (ICWA) PL-95-608 became law in 1978, due to tragic circumstances. In years before the passage of ICWA, the Association on American Indian Affairs (AAIA) conducted studies to document the problems associated with the adoption and foster care for Indian children. It found that in many Native American communities, Indian children were being placed in foster care more often than non-Indian children. Case workers from state welfare agencies and state courts were separating Indian children from their families, tribes and cultural heritage and placing them in non-Indian households without the consent of the tribe or family. As a result, Congress acted to remedy the many years of widespread separation of Indian children and families through the passage of ICWA. Many of us worked to support this legislation in Congress, and we continue to remember the painful circumstances that made ICWA a necessity.

We join with tribes and strongly oppose the language in Title III by Representative Pryce that was passed by the House on May 10. This language is unacceptable, and the process of its passage was less than fair. Several proposals to amend ICWA—H.R. 1448, earlier legislation introduced by Congresswoman Pryce, as well as Title III of H.R. 3286—have met with the clear and united opposition of tribes and national groups like the National Indian Child Welfare Association and National Congress of American Indians, as well as the Bureau of Indian Affairs. The language amending ICWA as included in H.R. 3286 was an unprecedented act of the House. In an act that Committee on Resources Chairman Representative Young called "a first," the House Rules Committee overruled the recommendation of the committee of jurisdiction to drop the Pryce language.

We commend the good faith efforts of tribes to present alternative language to Title III of H.R. 3286, the Adoption Promotion and Stability Act. They have worked diligently to produce amendments that will not dismantle the protections of ICWA, and we will continue to support them in their endeavors. We also express our appreciation to the Senate Indian Affairs Committee for your efforts to develop a stand-alone bill to make needed improvements and clarifications to the Indian Child Welfare Act that would be based on recommendations made by Indian tribes and tribal child welfare workers.

Sincerely,

Ruth Flower  
Legislative Education Secretary  
Friends Committee on National Legislation

Nancy Chupp  
Director  
Church Women United

Reverend Elenora Giddings Ivory  
Director  
Presbyterian Church (USA), Washington Office

Tom White Wolf Fassett  
General Board of Church and Society  
United Methodist Church

Rabbi David Saperstein  
Director  
Union of American Hebrew Congregations

Albert Pennybacker  
Director  
National Council of Churches

Kevin and Marie Stulp  
49 Briar Hollow Lane #1801  
Houston TX 77027-9309  
713-552-0410

96 MAY 17 PM 2: 34

May 13, 1996

Senator John McCain  
Senate Russell Building, Room 241  
Washington, DC 20510-0303

RE: House Bill 3286 - Interracial Adoption Act

Dear Senator McCain,

I am requesting your support of House Bill H.R. 3286, especially in regards to Title III which modifies the Indian Child Welfare Act of 1978.

We request this because of personal experience. We are currently involved in an open adoption. The birthmother's heritage is 31/64<sup>ths</sup> White Earth Chippewa, and the rest is Anglo and the birthfather is Anglo. The parents have little to no contact with the Tribe and found us, a non Native American family, and after the usual phone calls and letters had chosen us to be the adoptive parents. A couple of weeks after this initial contact the adoption agency said, there may be a little problem, the birthmother has some Native American heritage.

After frantically contacting lawyers, researching libraries, the Internet, etc., we discovered that even if there is no cultural contact, or desire to do so on the birthparents part, the child is really the child of a tribe, a sovereign, non-US law based entity against whom there is little hope of winning legally, even though the birthparents and adoptive parents have a clear independent desire for the child to be placed in adoptive parent's household.

I don't know all the ramifications of Title III, I do know that the Indian Child Welfare Act as it stands now, does not support the desires of a birthmother and father when their wishes do not coincide with the tribe. I think in any case an adult, informed, intelligent set of birthparents should be able to decide which family is the best one in which to place the child, independent of the tribe's wishes. It amazes me that in the United States of America, we can override parents wishes, and have a governmental group decide what is right for that child, based on a racial distinction, to the exclusion of any other factor.

If you could have been on the phone with us when we called our birthmother to inform her it was our belief that she would not be able to choose us as our family, but would need to relinquish the child to the Chippewa tribe of White Earth who would be deci

where her child would be placed (who would never place with us, as a non Native American family), you would be highly motivated to amend the ICWA.

Our story does have a happy ending: the Tribe the birthmother was registered in at birth recently changed the blood quantum requirement to be defined as an Indian child was raised from 1/8 to 1/4. And so, by just the smallest of margins, the quantum of Indian blood was insufficient to have this baby boy to be defined as an Indian for this tribe. Therefore, we are currently pursuing this as a "normal" agency adoption.

If we had been dealing with almost any other tribe, however, the tribe would have made the decision on where the baby went, forcing the birthparents to either try to parent when they feel they are not ready, since they would not be able to participate in the choice of adoptive parent, and have no relationship whatever with the Tribe which currently has every authority to do this for them. Or they would go against their better judgment, and release to a tribe they do not know or trust to do the best for this most personal and emotionally wrenching of decisions, or we could attempt to try this in court, and spend six figures on legal costs for an unknown outcome, with the biggest issue of a child potentially being taken out of our home after 3 or 4 grueling years of court battles. (Not a likely path from our perspective, too much liability for the baby, emotional cost and financial cost).

Please take these thoughts into account as you look at this bill and especially Title III, as it relates to open adoption, since this is far more prevalent than it was in 1978 when this law was passed.

Respectfully,



Kevin Stulp

## Osage Executive Department

P.O. Box 53  
Pawhuska, OK 74056  
(918) 287-1128

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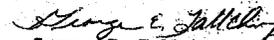
September 23, 1996

Honorable John McCain, Chairman  
United States Senate  
Committee on Indian Affairs  
Washington, D.C. 20510-6540

Dear Senator McCain,

The Osage Nation is in support of passage S. 1962, a bill that embodies the "Tulsa" agreement amendments to the Indian Child Welfare Act of 1978 (ICWA) developed by the Indian tribes and adoptive families.

Sincerely,



George E. Tallchief  
President, Osage Nation

cc: Senator Don Nickles  
Senator James Inhofe

## AMERICAN ACADEMY OF ADOPTION ATTORNEYS

P.O. BOX 33053  
WASHINGTON, D.C. 20033-0053  
(202) 632-2222

PLEASE REPLY TO:

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Samuel C. Totaro, Jr., President  
Four Greenwood Square, Suite 100  
Bensalem, PA 19020  
(215) 244-1045  
Fax (215) 244-0641

August 21, 1996

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United States Senate  
Committee on Indian Affairs  
Washington, D.C. 20510-6450

Dear Senator McCain and the Honorable Members of the Senate  
Committee on Indian Affairs:

This letter is to reaffirm our support of S.1962 notwithstanding the recent letter of Douglas Johnson (dated August 1, 1996) to Senator Lott asking that the bill be halted. Mr. Johnson does not explain in his letter how the bill might impact abortion, but instead quotes National Council for Adoption for the proposition that "it would be the end of voluntary adoptions of children with any hint of Indian ancestry." Presumably, NCFCA bases this assertion on the theory that agencies and attorneys would be so fearful of the criminal provisions of the amendments that they would refuse to work with birthparents of Indian ancestry. NCFCA believes that the resultant projected inability of such birthparents to find professionals willing to help them place their children for adoption, would lead to more abortions. Though this reasoning is not spelled out it is the only connection to abortion we can possibly infer.

Our continued support of the bill is not based on a desire to see more abortions. Rather, we seriously question the basic premise of Mr. Johnson's letter that S.1962 would have any impact on abortion.

The bill is intended to encourage the adoption of children of Indian ancestry by making such adoption safer for adoptive parents. The one or two percent of the children of Indian ancestry who are "Indian children," as defined by the I.C.W.A., would be identified early in the process (likewise, the remaining 98% would be promptly identified as not subject to the I.C.W.A.).

Within a short time (compared to the present situation) tribes would be required to give adoptive parents notice of a potential problem and their failure to do so would eliminate the possibility of a problem. Because the bill would make adoption safer for adoptive parents, we support it.

The criminal sanctions contained in the bill deal with fraudulent efforts to avoid the law. Reputable agencies and attorneys do not commit fraud and have nothing to fear. The fact that adoption attorneys and agencies willing to comply with the I.C.W.A. support this bill, refutes the entire thrust of NRLC and NCFCA's position.

Adoption attorneys and agencies should be more willing to work with birthparents of Indian ancestry if S.1962 passes, then under present law. Pregnant women exploring adoption will find that more families will be desirous of adopting their children than they are today, and thus, they will have more alternatives to abortion.

Please do what you can to make S.1962 the law immediately and count on our continued support.

Yours truly,

Samuel C. Totaro, Jr.  
President

SCT:ejn



## SQUAXIN ISLAND TRIBE

July 23, 1996

The Honorable John McCain  
Chairman  
Senate Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, DC 20510  
ATTN: Phil Baker-Shenk, General Counsel

Dear Chairman McCain:

The Squaxin Island Tribe is appreciative of the efforts of the Committee on behalf of Indian families, children and Tribal governments regarding the amendments to the Indian Child Welfare Act of 1978. However, we are greatly concerned that S.1962 will not address the intentions of the House Title III language.

We have learned of state judges imposing state court created doctrines which allows them to determine what constitutes an Indian family" This is being carried out in state courts of jurisdiction under a not so well known "Existing Indian Family Doctrine".

The Squaxin Island Tribe requests that the Committee consider inclusion of language that would alleviate this overshadowing nemesis in Indian Country once and for all. Such language could read as follows:

*"The Provisions of this Title shall apply to all custody proceedings involving an Indian child as defined herein."*

As always, we look to this Committee to hear our pleas for fair treatment of our Indian children and we thank you for all that you have already accomplished on this issue.

Sincerely,

David Whitener  
Chairman

cc: Daniel K. Inouye, Vice-Chairman

LJMS1962.ICW

SQUAXIN ISLAND TRIBE / S.E. 70 Squaxin Lane / Shelton, WA 98584 / Phone (206) 426-9781  
Tribal Council (206) 426-9783      Natural Resources (206) 426-9783      Health Clinic (206) 427-9006

## Sac and Fox Nation

Route 2, Box 246

Stroud, OK 74079

Principal Chief DORA S. YOUNG  
Second Chief MERLE BOYD  
Secretary MARY F. McCORMICK  
Treasurer CANDACE HOWARD  
Committee Member EDWARD CHARLES SPOON

July 23, 1996



The Honorable John McCain  
Chairman  
Senate Committee on Indian Affairs  
SH-838 Hart Senate Office Building  
Washington, DC 20510

Re: S.1962 Indian Child Welfare Act Amendments of 1996

Dear Chairman McCain:

The Sac and Fox Nation has greatly appreciated the collective efforts of the Senate Committee on Indian Affairs, Tribal Leaders and Adoption Attorneys under your leadership as Chairman in addressing the amendments to the Indian Child Welfare Act of 1978. Such cooperation among all parties is to be commended.

However, it has come to our attention that certain state courts, including Oklahoma, are applying the "existing Indian family" doctrine to avoid application of ICWA in cases involving Indian children. Too much effort has been put forth to create amendments to ICWA to fall short of resolving these type of issues. We ask that the Committee give full consideration to adding language that will bring final resolution to matters of jurisdiction whenever an Indian child is the subject of a child custody proceeding. We recommend that the language include "The provisions of this Title shall apply to all custody proceedings involving an Indian Child as defined herein."

We thank you for the continued support of our children.

Respectfully,

Dora S. Young  
Principal Chief

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2021 H Street, N. W. -- Washington, D.C. 20006 4207

September 4, 1996

Senator Trent Lott  
Majority Leader, U. S. Senate  
United States Congress  
Washington, DC 20510

Dear Senator Lott,

I am writing in support of the amendment, S. 1962, to keep in effect the basic provisions of the Indian Child Welfare Act of 1978. Those who are opposed to that act for fear that Indian women will be driven to seek abortions, I believe, are without grounds. It was not the attitude of Indians to seek abortions. Indians welcomed infants. As tribal people they see infants as the promise of the future.

As this legislation stands, it provides the efficiency, speed and certainty of adoption. Delays and prolonging of the process are excluded now that the time limits are reduced. The birth-mother does not have the uncertainty that the old law mandated. It is efficient and speedy. For mothers, unfortunately forced by circumstances to give up their children for adoption, this present bill provides the surest means for adoption.

Thank you!

Sincerely yours,

*T. F. Zuern*  
Theodore F. Zuern, S.J.  
Legislative Director

cc: Sen. John McCain



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July 2, 1996

TO : Senate Indian Affairs Committee  
Attention: Steven Heeley

FROM : Roger Walke  
Analyst in American Indian Policy  
Government Division *RW*

SUBJECT : Indian Children in State Substitute Care in Selected States,  
1982-1993

This memorandum responds to your request for information on the number of Indian<sup>1</sup> children in selected states who were in state substitute care, for the years 1982 to 1993, based on data provided by the American Public Welfare Association (APWA). APWA's data come from its annual Voluntary Cooperative Information System (VCIS) survey of states, which began with the figures for 1982.

The memo first discusses definitions, some of the problems in the data, and the source. The memo then reviews the data table and its associated graphs.

**DATA DEFINITIONS AND APWA SOURCES<sup>2</sup>**

Substitute care generally refers to 24-hour care that occurs outside a child's own home, and includes foster family care, group homes, institutional care (but not boarding schools), and residential treatment. Different reporting agencies, however, may use somewhat different definitions. Most typically, children are placed in substitute care because they have been removed from their homes as a result of parental abuse, neglect, or, in some cases, abandonment. Less often, children are placed in substitute care because their parents have voluntarily

<sup>1</sup> As used in this report, "Indian" refers to American Indians and Alaska Natives (who may be Indians, Inuit (Eskimos), or Aleuts).

<sup>2</sup> This section was prepared with the assistance of Karen Spar, Specialist in Social Legislation, Education and Public Welfare Division, CRS.

relinquished their rights. (Data are not available on the number of Indian children whose parents have voluntarily relinquished them to substitute care.)

Substitute care can be provided by several different types of agencies, including state and local governmental agencies, the Bureau of Indian Affairs (BIA), Indian tribal governments, and private agencies, either Indian or non-Indian.

The data in this memo were provided to APWA by state agencies only, and hence cover only substitute care provided by state and local public agencies. Such public agencies usually gather information on the race of a child in care, but generally do not report a child's tribal membership status. State statistics on the number of Indian children served, then, refer to children classified by the public agency as *racially* Indian, whether on the basis of self-reporting (by parents, guardians, the children themselves, or others) or of classification by the caseworkers involved.<sup>3</sup>

The APWA data are incomplete. Not all states return data to the VCIS survey in any one year, and a number of states who do reply to the VCIS survey do not reply every year. Moreover, states who do send in data may not always provide a racial or ethnic breakdown of children in substitute care in the state. Hence APWA was not able to provide data on Indian children in state substitute care for all the years between 1982 and 1993; data for 1984 and 1986 are absent. Of the eight states profiled in this memo, only California had data for every year for which APWA provided data. Nationally, the number of states reporting to APWA with data on Indian children varied from 31 to 38. For APWA data on Indian children in substitute care in all states, see the appendix table at the end of this memo.

#### DATA ANALYSIS

Table 1 presents data on the number of Indian children in state substitute care, the number of all children in state substitute care, and the percentage of all children in state substitute care who are Indian, for all reporting states as a whole and for the following eight states: Arizona, California, Minnesota, New Mexico, North Dakota, South Dakota, Washington, and Wisconsin. The table also shows that the number of states reporting data on Indian children to APWA varied between 31 and 38 during the years 1982-1990, but fell to 20 for 1991-1993.

Graphs 1 through 6 highlight various aspects of these data. Graph 1 shows the national total of Indian children in state substitute care for reporting states.

<sup>3</sup> The degree to which racial Indian classification coincides with tribal membership has not been determined; the Bureau of the Census does not gather data on enrolled membership in federally-recognized tribes, and the Bureau of Indian Affairs does not report the racial classification of its service population.

The years 1982-1990, for which data are more complete, suggest a slight general upward trend. Graph 2 shows a steeper upward trend in the national total number of children, of any race, in state substitute care.

Graph 3 displays the trends in the number of Indian children in state substitute care for each of the eight selected states. Some states, such as California, Minnesota, and Washington, show a marked upward trend over the period 1982-1993. Graphs 4A and 4B present the trends for each state's total number of children, of any race, in state substitute care. (Separating California data in its own graph allowed better display of other states' variations over time.) Here the upward trends appear most marked for California, Washington, and Wisconsin.

The last two graphs show Indian children as a percentage of all children in state substitute care, for all reporting states (Graph 5) and for each of the selected states (Graph 6). Graph 5 indicates a general downward trend in the percentage of Indian children, for 1982-1993 and for the better-reported years 1982-1990. Graph 6 shows that individual states were more varied in the trends they exhibited, but suggests that none of the states displayed a marked upward trend in the percentage of children in state substitute care who were Indian.

Because of the limitations of the data used, any trends that appear in the graphs should be taken only as an estimate or a possibility, not as a definitive fact. It should especially be kept in mind that the data are about Indian children whose classification was more likely to be by race than by tribal membership, and that no data are provided for Indian children in the substitute care of the BIA, tribal governments, or private organizations.

Please call me at 707-8641 if you have any questions regarding this request.

RW/jcd

	1982	1983	1985	1987	1988	1989	1990	1991	1992	1993
Total Number of States Reporting to APWA	38	37	37	31	34	32	31	20	20	20
<b>UNITED STATES TOTAL</b>										
Indian Children	3,984	3,501	3,604	3,003	4,131	4,213	4,489	2,876	2,833	2,879
Total Children	199,433	173,566	210,832	212,546	258,766	243,815	306,035	233,676	249,451	257,362
Indian Percent of Total	2.00%	2.02%	1.71%	1.41%	1.60%	1.73%	1.47%	1.23%	1.14%	1.12%
<b>Arizona</b>										
Indian Children	83	80	127	n/a	109	127	107	n/a	n/a	n/a
Total Children	1,146	1,882	3,290	n/a	3,057	3,338	3,589	n/a	n/a	n/a
Indian Percent of Total	7.24%	4.25%	3.86%	n/a	3.57%	3.80%	2.98%	n/a	n/a	n/a
<b>California</b>										
Indian Children	378	410	485	589	671	753	828	870	919	954
Total Children	31,288	35,862	43,344	51,821	62,509	73,986	79,482	80,744	83,836	89,145
Indian Percent of Total	1.21%	1.14%	1.12%	1.14%	1.07%	1.02%	1.04%	1.08%	1.10%	1.07%
<b>Minnesota</b>										
Indian Children	622	471	503	685	690	819	809	n/a	n/a	n/a
Total Children	6,281	5,982	5,731	5,904	6,517	6,875	6,868	n/a	n/a	n/a
Indian Percent of Total	9.90%	7.87%	8.78%	11.60%	10.59%	11.91%	11.78%	n/a	n/a	n/a
<b>New Mexico</b>										
Indian Children	73	n/a	144	110	123	118	137	n/a	n/a	n/a
Total Children	947	n/a	2,251	2,088	1,983	1,873	1,976	n/a	n/a	n/a
Indian Percent of Total	7.71%	n/a	6.40%	5.27%	6.20%	6.03%	6.93%	n/a	n/a	n/a

450

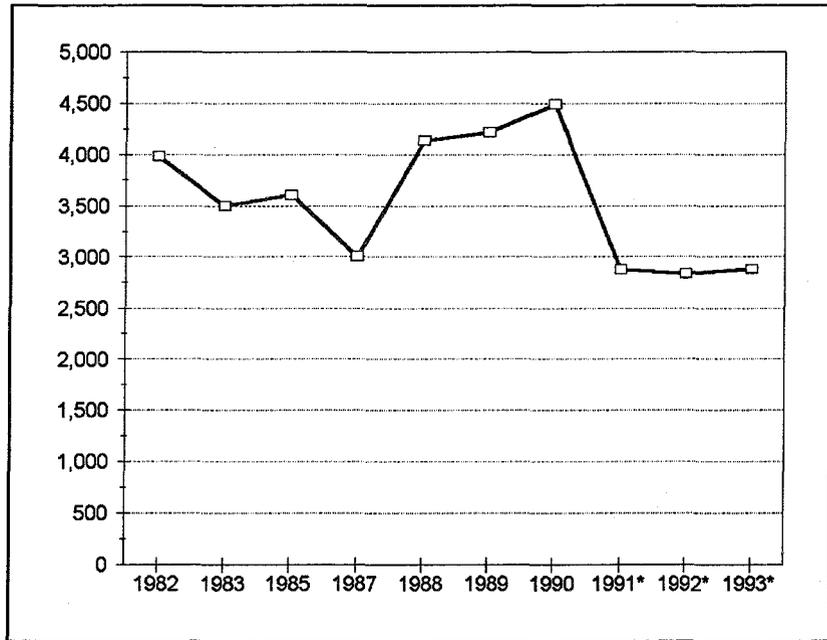
	1982	1983	1985	1987	1988	1989	1990	1991	1992	1993
<b>North Dakota</b>										
Indian Children	226	214	n/a	185	n/a	237	n/a	248	236	261
Total Children	713	715	n/a	609	n/a	720	n/a	738	768	822
Indian Percent of Total	31.70%	29.93%	n/a	30.38%	n/a	32.92%	n/a	33.60%	30.73%	31.75%
<b>South Dakota</b>										
Indian Children	488	346	428	318	281	279	512	n/a	n/a	n/a
Total Children	790	546	671	461	446	456	787	n/a	n/a	n/a
Indian Percent of Total	61.77%	63.37%	63.79%	68.98%	63.00%	61.18%	65.06%	n/a	n/a	n/a
<b>Washington</b>										
Indian Children	497	397	521	n/a	n/a	1,108	1,292	830	948	928
Total Children	5,982	4,533	5,751	n/a	n/a	12,757	13,302	7,026	8,470	8,934
Indian Percent of Total	8.31%	8.76%	9.06%	n/a	n/a	8.69%	9.71%	11.81%	11.19%	10.39%
<b>Wisconsin</b>										
Indian Children	238	262	248	233	209	228	235	263	n/a	n/a
Total Children	4,058	4,841	4,757	4,826	5,108	5,700	6,316	7,201	n/a	n/a
Indian Percent of Total	5.86%	5.41%	5.21%	4.83%	4.09%	4.00%	3.72%	3.65%	n/a	n/a

NOTES: APWA = American Public Welfare Association  
n/a = not available

SOURCE: American Public Welfare Association, unpublished data on ethnicity, transmitted May 21, 1996.

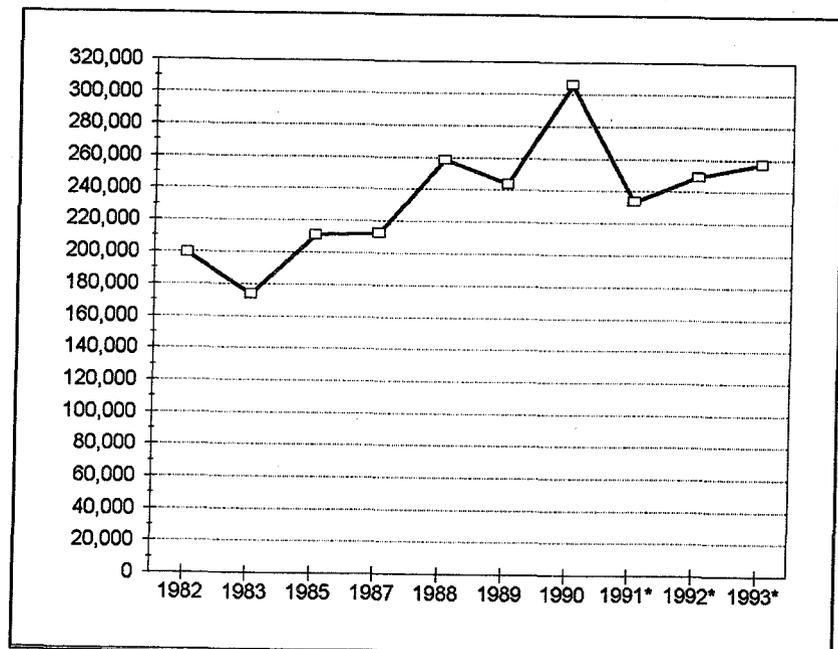
451

Graph 1. Total Number of Indian Children in State Substitute Care, for All States Reporting to American Public Welfare Association (APWA), for Various Years, 1982-1993

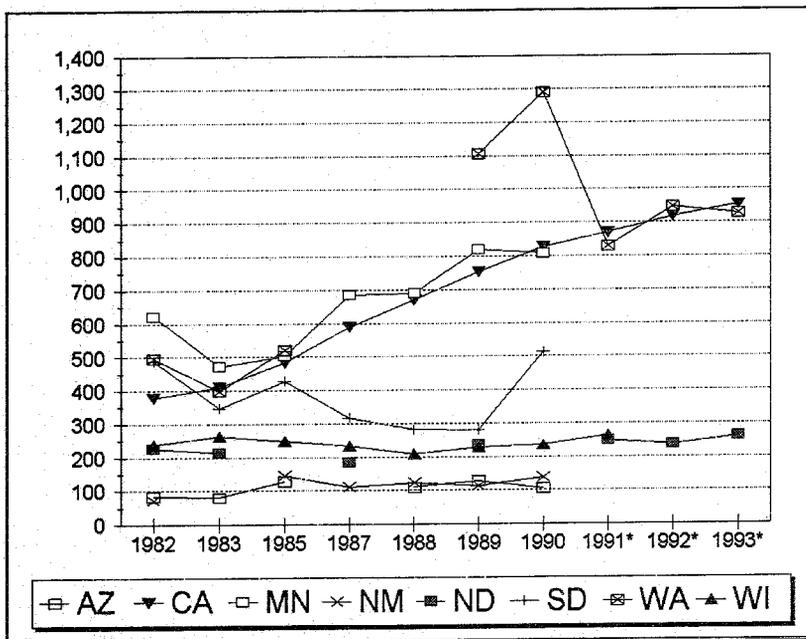


\* Only 20 states reported for 1991-1993. For earlier years, 31-38 states reported. See Table 1 for details.

Graph 2. Total Number of Children of Any Race in State Substitute Care, for All States Reporting to American Public Welfare Association (APWA), for Various Years, 1982-1993

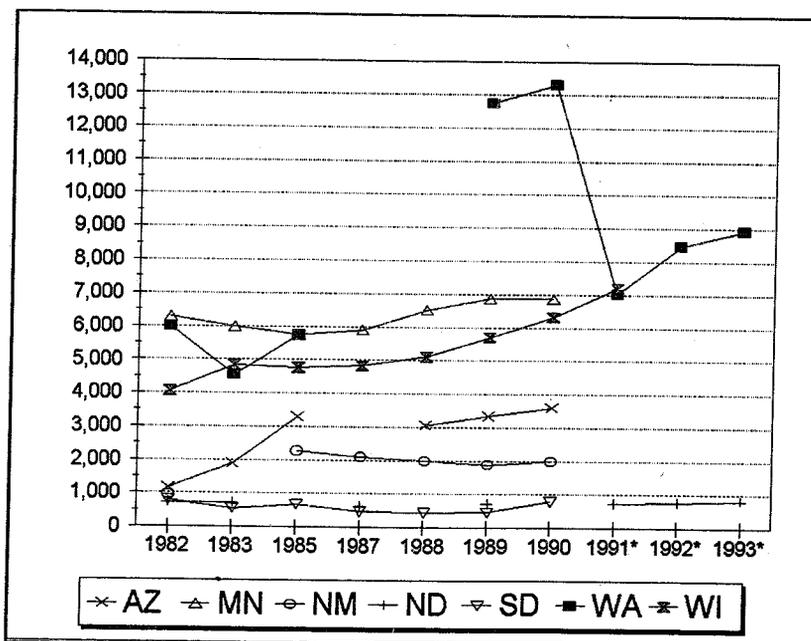


Graph 3. Number of Indian Children in State Substitute Care in Eight Selected States Reporting to American Public Welfare Association (APWA), for Various Years, 1982-1993



454

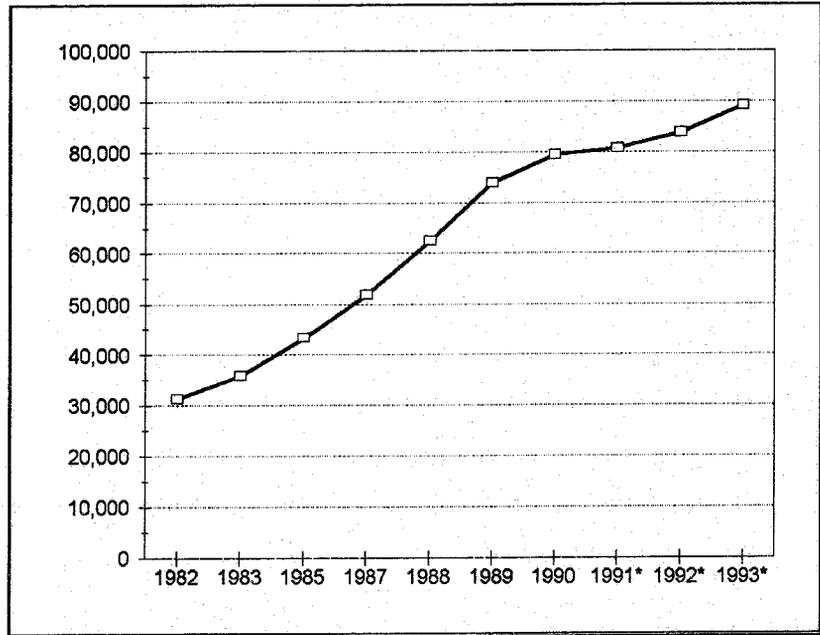
Graph 4A. Total Number of Children of Any Race in State Substitute Care, for Seven Selected States Reporting to American Public Welfare Association (APWA), for Various Years, 1982-1993



455

\* Only 20 states reported for 1991-1993. For earlier years, 31-38 states reported. See Table 1 for details.

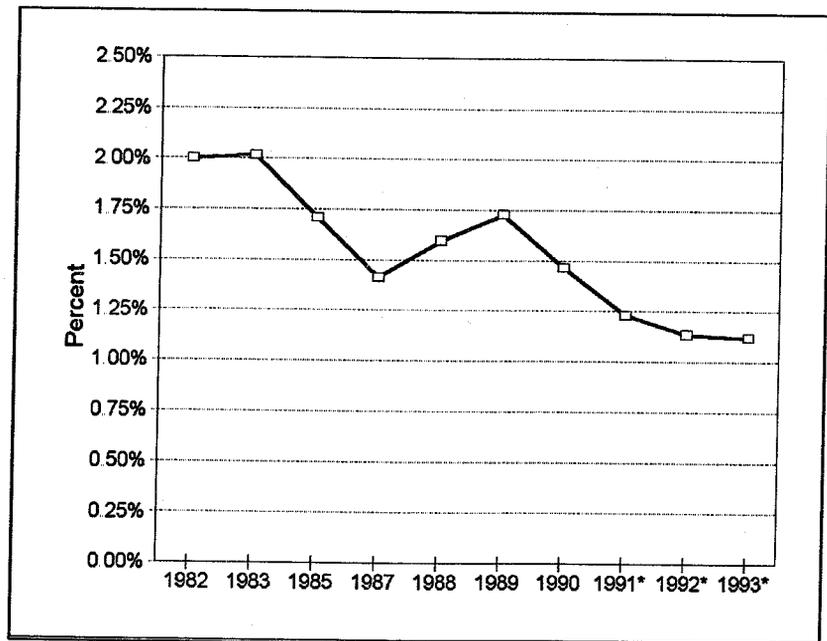
Graph 4B Total Number of Children of Any Race in State Substitute Care, for California (Report to APWA), for Various Years, 1982-1993



456

\* Only 20 states reported for 1991-1993. For earlier years, 31-38 states reported. See Table 1 for details.

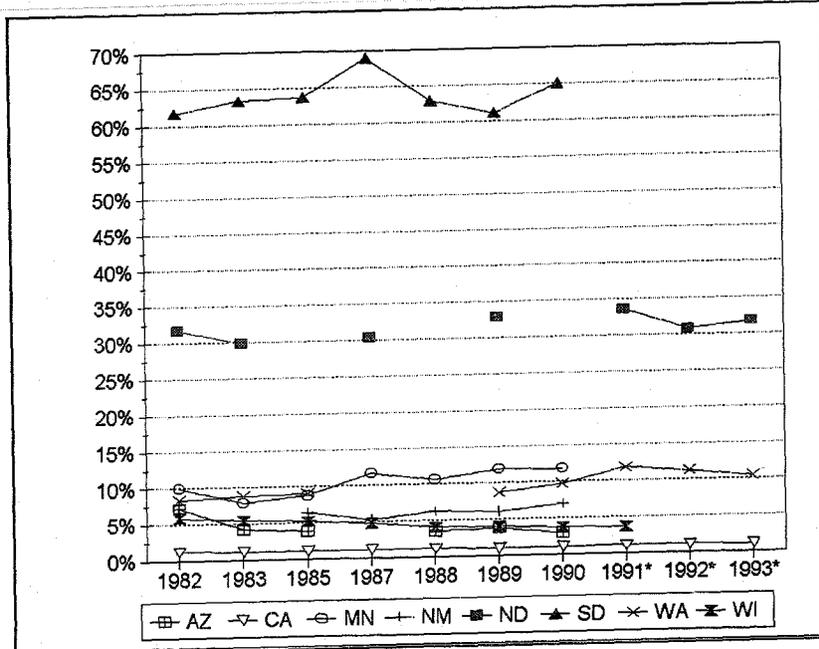
Graph 5 Indian Children as a Percentage of All Children in State Substitute Care, for All States Reporting to American Public Welfare Association (APWA), for Various Years, 1982-1993



457

\* Only 20 states reported for 1991-1993. For earlier years, 31-38 states reported. See Table 1 for details.

Graph 6. Indian Children as a Percentage of All Children in State Substitute Care in Eight Selected States Reporting to American Public Welfare Association (APWA), for Various Years, 1982-1993



458

\* Only 20 states reported for 1991-1993. For earlier years, 31-38 states reported. See Table 1 for details

	1982	1983	1985	1987	1988	1989	1990	1991	1992	1993
Alabama	1	6	6	9	14	7	8	5	11	5
Alaska	n/a	n/a	n/a	n/a	942	n/a	n/a	n/a	n/a	n/a
Arizona	83	80	127	n/a	109	127	107	n/a	n/a	n/a
Arkansas	6	n/a	5	2	n/a	3	1	7	5	2
California	378	410	485	589	671	753	828	870	919	954
Colorado	40	43	67	n/a						
Connecticut	14	9	13	13	12	10	10	n/a	n/a	n/a
Delaware	n/a	n/a	1	n/a						
District of Columbia	n/a									
Florida	n/a	n/a	17	n/a	11	13	13	n/a	n/a	n/a
Georgia	11	23	14	11	12	17	19	n/a	17	11
Hawaii	0	0	1	n/a						
Idaho	n/a	n/a	n/a	45	25	22	24	28	20	22
Illinois	57	n/a								
Indiana	n/a	7	9	3	10	n/a	n/a	15	47	66
Iowa	n/a	25	n/a	n/a	66	n/a	n/a	n/a	n/a	n/a
Kansas	36	60	59	53	n/a	n/a	n/a	n/a	n/a	n/a
Kentucky	n/a	3	12	14	9	9	4	n/a	n/a	n/a
Louisiana	18	20	22	n/a						
Maine	38	32	32	n/a	33	38	38	n/a	n/a	n/a
Maryland	37	31	6	6	12	7	7	6	6	5
Massachusetts	n/a	25	24	25	18	19	24	23	15	11
Michigan	71	46	n/a							

459

Appendix Table. APWA Count of Indian Children in State Substitute Care, by State, for Various Years, 1982-1993										
	1982	1983	1985	1987	1988	1989	1990	1991	1992	1993
Minnesota	622	471	503	685	690	819	809	n/a	n/a	n/a
Mississippi	3	4	7	4	1	3	4	3	3	3
Missouri	7	12	6	12	17	19	23	17	13	20
Montana	171	165	n/a							
Nebraska	147	146	110	112	121	n/a	n/a	200	228	223
Nevada	19	10	21	26	77	74	n/a	90	63	60
New Hampshire	0	0	n/a							
New Jersey	n/a	6	15	n/a						
New Mexico	73	n/a	144	110	123	113	137	n/a	n/a	n/a
New York	0	n/a	49	31	39	n/a	73	82	74	63
North Carolina	118	121	204	146	150	161	175	171	204	223
North Dakota	226	214	n/a	185	n/a	237	n/a	248	236	261
Ohio	n/a	n/a	5	n/a	12	14	n/a	n/a	n/a	n/a
Oklahoma	257	243	212	255	339	n/a	n/a	n/a	n/a	n/a
Oregon	114	122	89	n/a						
Pennsylvania	n/a	n/a	n/a	n/a	n/a	n/a	11	n/a	n/a	n/a
Rhode Island	6	n/a	2	29	30	26	26	n/a	n/a	n/a
South Carolina	0	n/a	n/a	0	0	0	0	0	0	0
South Dakota	488	346	428	318	281	279	512	n/a	n/a	n/a
Tennessee	0	0	0	n/a	1	1	1	2	2	3
Texas	38	30	24	15	21	22	23	n/a	n/a	n/a
Utah	145	108	98	56	64	64	61	n/a	n/a	n/a
Vermont	9	10	15	10	12	9	9	9	10	9

460

Appendix Table. APWA Count of Indian Children in State Substitute Care, by State, for Various Years, 1982-1993										
	1982	1983	1985	1987	1988	1989	1990	1991	1992	1993
Virginia	3	2	3	6	0	11	15	7	12	10
Washington	497	397	521	n/a	n/a	1,108	1,292	830	948	928
West Virginia	n/a	n/a	0	n/a						
Wisconsin	238	262	248	233	209	228	235	263	n/a	n/a
Wyoming	13	12	n/a							
National Total for Indian Children for Reporting States	3,984	3,501	3,604	3,003	4,131	4,213	4,489	2,876	2,833	2,879
National Total for All Races for Reporting States	199,433	173,556	210,832	212,546	258,766	243,815	306,035	233,676	249,451	257,362
Indian Percentage of National Total for Reporting States	2.00%	2.02%	1.71%	1.41%	1.60%	1.73%	1.47%	1.23%	1.14%	1.12%
National Total for All Races Extrapolated to All States	262,000	269,000	276,000	300,000	340,000	383,000	407,000	429,000	442,000	445,000

NOTES: n/a = not available

\* Figures for this year are CRS estimates and should be used with great caution. See discussion in text.

## SOURCES:

Toshio Tatara, American Public Welfare Association, 810 First St., N.E., Suite 500, Washington, D.C. Unpublished data from the VCIS on children in substitute care by race/ethnicity of the children, by state, 1982-1983, 1985, 1987-1993. Transmitted May 21, 1996.

United States. Congress. House of Representatives. Committee on Ways and Means. *Overview of Entitlement Programs: 1994 Green Book. Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means.* 103d Cong., 2d Sess., Committee Print WMCP: 103-27. Washington: U.S. Govt. Print. Off., 1994, pp. 639-640.

461