BOYS: Tribe says 3 youngsters below with it

From A V

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 an estate specialist at Secco's Liquor Store.

"But there's a greater issue here. We're making 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 said.

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 Gremban is not as sure that the Jenkinses' contention of care is more important than cultural identity. "Love doesn't overcome everything, unfortunately," said Gremban. "Some people have to understand when they come from and sometimes that need comes true.

But Rodolfo Mares, who represents the tribe, speaks the issue as a political one -- not a race one.

"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 Mares, Matthew 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 boy's biological mother, could not be reached for comment. However, his lawyer, Kim Hard, said White has requested the Jenkinses have custody of the boys. Hard also admits her client is not a responsible person.

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

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

McLaughlin decided to do the Jenkinses case pro bono after meeting 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-
August 1, 1996

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

Dear Chairman McCain:

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 roles. 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

July 23, 1996

The Honorable Daniel Inouye, Ranking Minority, SCIA

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

Dear Chairman Inouye:

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,

Chaddock Johnson
Chairman

cc: The Honorable Daniel Inouye, Ranking Minority, SCIA

400
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,

Rev. Fred Kammer, SJ
President

Episcopal Liaison
The Most Reverend Joseph M. Sullivan, Chair
Rev. Timothy A. Holguin, Vice Chair
Ms. Linda M. Kikko, Secretary
Sister Barbara A. Moore, CSJ, Treasurer
Mr. Bruce J. Kouk, President
Rev. Fred Kammer, SJ
President

Catholic Charities USA
1731 King Street
Alexandria, Virginia 22314
Phone: (703) 548-1000
Fax: (703) 548-1008

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Indian Adoptions Aren't Blocked by Law

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
September 10, 1996

The Honorable John McCain, Chairman
Committee on Indian Affairs
United States Senate
Rm 382 Senate Hart 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 a 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 timely 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 Lederberg
Executive Director
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 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 10, 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:

Lona J. Jim, Secretary

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. Walsh, 899 F.2d 672, 675 (8th Cir. 1990). In accordance with these rulings, the United States Court of Appeals for the Ninth
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 E., 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/slb

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).
September 11, 1996

Sen. John McCain
United States Senate Committee On Indian Affairs
Washington, DC 20510-5450

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 have worked in the social work field for twelve years. I can assure you the tribes make every effort to work with Indian mothers to assure 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-Indian’s 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 unflagging efforts to help us protect our most valuable resources, our children.

Sincerely,

Rebeca Minyard
Rebeca Minyard, Social Worker
Indian Child Welfare
Alabama Quassarte Tribal Town

SHINGLE SPRINGS RANCHeria

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

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 the White society were superior to their own. Our inability or disinclination to accept this was said to show they were failures. The pervasiveness of these assaults resulted in great numbers of Indians being scattered and confused—physically and culturally cut off from their heritage.

To be sure some of these policies were thought to be in the Indians’ 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 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 the Indian tribes and their resources…” passed the ICWA. Implicit in the Congress’ goal of preserving Tribes is preserving their culture. Unfortunately the Re-conception 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 lost over a long, long time.

Now, after a mere eighteen years, those 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 that of a party with the interests of the parents.” If this is understood the false doctrine of “cutting Indian family” has no validity on whether a child qualifies under the Indian Child Welfare Act. We urge you to announce this erroneous dogma.

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

Sincerely,

William Murray
Chairperson

Shingle Springs Rancheria
September 27, 1996

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 #1962 passed in the Senate 9/26 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, 1996 where Bill Pierce from the NCFA was in attendance with attorney Michael Bentzen, Doug Johnson (NRLC) and Jackie Ragan (also NRLC).

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 1,500 in the U.S.) and NC 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 Santa/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 ploy because, if the list were made public, it most likely would be embarrassingly short and very narrow in his 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 UAA 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, moneyminded, 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 hit the dust in a Tennessee Federal District Court Dedication by Judge John T. Nixon on August 23, 1996. 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 portrayed 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, Legislative Director, American Adoption Congress
3 Harding Terrace
Morristown, NJ 07960-3252  201-257-98 Fax 201-267-3356

June 24, 1996

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

Dear Mr. Heesey,

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 L. Pierce
President

Fax: 224-5429
Washington, D.C. 20544-1207
202-386-1000
202-386-3215
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 issues 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 their 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

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 now 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, supplanting 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.
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.
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 would satisfy the relationship required for application of ICWA. The determination of whether the children were removed from an existing Indian family must be made at 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 113 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.
not apply to a non-Indian mather 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 (a) 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 purpose" 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 no 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 list of those individuals who are enrolled as members of the tribe. If a tribe has not published in the Federal Register the required information, for purposes of the Indian Child Welfare Act, there are no existing requirements, 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 by the relative adoptee. According to a 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, 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 bear 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 choice for as many as 1,800 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. MCCUSL 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 (b)."

13. If Section 103 (b) 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 (b) and insert in lieu thereof the following: VISITATION AGREEMENT AND ORDER (1) Upon the request of the petitioner, in a proceeding for adoption by a minor Indian tribe, 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'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. 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 plan for the parties to the agreement will cooperate in performing its terms; (e) the recommendation of the minor's guardian ad litem, lawyer, social worker, or other cognizant, and (f) any other factor relevant to the best interest of the minor Indian adoptee. (3) In addition to the requirements 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, a guardian of the minor, a relative of the minor, or another individual to visit and communicate with the Indian minor if: (a) the grandparent is the parent of a deceased parent of the Indian minor or the tribe from which the minor is enrolled, (b) the minor's parental relationship to the Indian minor is terminated by the minor's adoption, (c) the former parent, guardian, or a non-custodial relative to whom the minor is related by blood or marriage at the time of the adoption requests, and (d) any other factor relevant to the best interest of the minor Indian adoptee. (4) The court may order the petitioner to pay all reasonable costs of the proceedings reasonably incurred by the minor, the minor's parent, or another person on behalf of the minor.
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; (d) in making a determination under subsection (3) or (5), 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 stepparent, 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 stepparent 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.

MCCain:

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 satisfies 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 custodial control over the twins' adoptive parents or have some other permanence custodial status. 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, if 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 accept ICWA as written 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 foster 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

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. Frye said essentially the same thing.

S. 1962, despite the claims by its supporters to be “non-controversial” and a “compromise” is neither 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
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 disregarded.

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 inadvertently or inadvertently, seek to improperly invade tribal sovereignty and to upset the already proper balance established by the U.S. Congress and affirmed 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, repugnant evil renegade at the tribes and their 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

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 rights 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 its support to S. 1962.

Sincerely,

THE HOPI TRIBE

Farrell Secakuku, Chairman
Chief Executive Officer

P. O. BOX 123 - KYKOTSIMOVI, ARIZONA - 86039 - (520) 734-2441
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
Dear Senator McCam,

RE: House Bill 3286 - Interracial Adoption Act

May 13, 1996

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 31/64ths White Earth Chippewa, 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 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 a 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 who 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 decid
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
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 NCFA and NRLC's position.

Adoption attorneys and agencies should be more willing to work with birthparents of Indian ancestry if S.1962 passes, even 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, these 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

Handwritten note:

Scribner
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,

Daniel Whitener
Chairman
Dora S. Young
Principal Chief

Sac and Fox Nation

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


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 fail 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
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 birthmother 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,

Theodore F. Korns, S.J.
Legislative Director

cc: Sen. John McCain

DATA DEFINITIONS AND APWA SOURCES

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

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

2 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.

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 1982-1993, 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.

3 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 1982-1990. 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 1982-1985 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
### Table 1. APWA Count of Indian Children and All Children in State Substitute Care, for Total United States and Selected States, for Various Years, 1982-1993

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Number of States Reporting to APWA</th>
<th>United States Total</th>
<th>Indian Children</th>
<th>Total Children</th>
<th>Indian Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1982</td>
<td>38</td>
<td>3,984</td>
<td>3,984</td>
<td>199,433</td>
<td>2.00%</td>
</tr>
<tr>
<td>1983</td>
<td>37</td>
<td>3,501</td>
<td>1,083</td>
<td>173,556</td>
<td>2.02%</td>
</tr>
<tr>
<td>1985</td>
<td>37</td>
<td>3,604</td>
<td>397</td>
<td>210,832</td>
<td>1.71%</td>
</tr>
<tr>
<td>1987</td>
<td>31</td>
<td>3,003</td>
<td>1,411</td>
<td>212,546</td>
<td>1.41%</td>
</tr>
<tr>
<td>1988</td>
<td>34</td>
<td>4,131</td>
<td>989</td>
<td>258,766</td>
<td>1.60%</td>
</tr>
<tr>
<td>1989</td>
<td>32</td>
<td>4,213</td>
<td>1,792</td>
<td>245,815</td>
<td>1.73%</td>
</tr>
<tr>
<td>1990</td>
<td>31</td>
<td>4,439</td>
<td>1,476</td>
<td>306,035</td>
<td>1.47%</td>
</tr>
<tr>
<td>1991</td>
<td>20</td>
<td>2,876</td>
<td>724</td>
<td>233,670</td>
<td>1.23%</td>
</tr>
<tr>
<td>1992</td>
<td>20</td>
<td>2,833</td>
<td>620</td>
<td>249,451</td>
<td>1.14%</td>
</tr>
<tr>
<td>1993</td>
<td>20</td>
<td>2,879</td>
<td>20</td>
<td>257,362</td>
<td>1.12%</td>
</tr>
</tbody>
</table>

#### Arizona

<table>
<thead>
<tr>
<th>Year</th>
<th>Indian Children</th>
<th>Total Children</th>
<th>Indian Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>83</td>
<td>127</td>
<td>83/127 = 6.51%</td>
</tr>
<tr>
<td>1983</td>
<td>80</td>
<td>127</td>
<td>80/127 = 6.29%</td>
</tr>
<tr>
<td>1985</td>
<td>127</td>
<td>109</td>
<td>127/109 = 11.57%</td>
</tr>
<tr>
<td>1987</td>
<td>109</td>
<td>127</td>
<td>109/127 = 8.55%</td>
</tr>
<tr>
<td>1988</td>
<td>127</td>
<td>127</td>
<td>127/127 = 100.00%</td>
</tr>
<tr>
<td>1989</td>
<td>127</td>
<td>127</td>
<td>127/127 = 100.00%</td>
</tr>
<tr>
<td>1990</td>
<td>127</td>
<td>127</td>
<td>127/127 = 100.00%</td>
</tr>
<tr>
<td>1991</td>
<td>127</td>
<td>127</td>
<td>127/127 = 100.00%</td>
</tr>
<tr>
<td>1992</td>
<td>127</td>
<td>127</td>
<td>127/127 = 100.00%</td>
</tr>
<tr>
<td>1993</td>
<td>127</td>
<td>127</td>
<td>127/127 = 100.00%</td>
</tr>
</tbody>
</table>

#### California

<table>
<thead>
<tr>
<th>Year</th>
<th>Indian Children</th>
<th>Total Children</th>
<th>Indian Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>378</td>
<td>419</td>
<td>378/419 = 90.60%</td>
</tr>
<tr>
<td>1983</td>
<td>419</td>
<td>1,332</td>
<td>419/1,332 = 31.69%</td>
</tr>
<tr>
<td>1985</td>
<td>1,332</td>
<td>3,290</td>
<td>1,332/3,290 = 40.62%</td>
</tr>
<tr>
<td>1987</td>
<td>3,290</td>
<td>3,057</td>
<td>3,290/3,057 = 107.50%</td>
</tr>
<tr>
<td>1988</td>
<td>3,057</td>
<td>3,338</td>
<td>3,057/3,338 = 91.60%</td>
</tr>
<tr>
<td>1989</td>
<td>3,338</td>
<td>3,589</td>
<td>3,338/3,589 = 93.40%</td>
</tr>
<tr>
<td>1990</td>
<td>3,589</td>
<td>3,589</td>
<td>3,589/3,589 = 100.00%</td>
</tr>
<tr>
<td>1991</td>
<td>3,589</td>
<td>3,589</td>
<td>3,589/3,589 = 100.00%</td>
</tr>
<tr>
<td>1992</td>
<td>3,589</td>
<td>3,589</td>
<td>3,589/3,589 = 100.00%</td>
</tr>
<tr>
<td>1993</td>
<td>3,589</td>
<td>3,589</td>
<td>3,589/3,589 = 100.00%</td>
</tr>
</tbody>
</table>

#### Minnesota

<table>
<thead>
<tr>
<th>Year</th>
<th>Indian Children</th>
<th>Total Children</th>
<th>Indian Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>622</td>
<td>471</td>
<td>622/471 = 131.83%</td>
</tr>
<tr>
<td>1983</td>
<td>471</td>
<td>603</td>
<td>471/603 = 78.02%</td>
</tr>
<tr>
<td>1985</td>
<td>603</td>
<td>568</td>
<td>603/568 = 106.25%</td>
</tr>
<tr>
<td>1987</td>
<td>568</td>
<td>594</td>
<td>568/594 = 95.25%</td>
</tr>
<tr>
<td>1988</td>
<td>594</td>
<td>6,675</td>
<td>594/6,675 = 8.90%</td>
</tr>
<tr>
<td>1989</td>
<td>6,675</td>
<td>6,675</td>
<td>6,675/6,675 = 100.00%</td>
</tr>
<tr>
<td>1990</td>
<td>6,675</td>
<td>6,675</td>
<td>6,675/6,675 = 100.00%</td>
</tr>
<tr>
<td>1991</td>
<td>6,675</td>
<td>6,675</td>
<td>6,675/6,675 = 100.00%</td>
</tr>
<tr>
<td>1992</td>
<td>6,675</td>
<td>6,675</td>
<td>6,675/6,675 = 100.00%</td>
</tr>
<tr>
<td>1993</td>
<td>6,675</td>
<td>6,675</td>
<td>6,675/6,675 = 100.00%</td>
</tr>
</tbody>
</table>

#### New Mexico

<table>
<thead>
<tr>
<th>Year</th>
<th>Indian Children</th>
<th>Total Children</th>
<th>Indian Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>73</td>
<td>144</td>
<td>73/144 = 50.00%</td>
</tr>
<tr>
<td>1983</td>
<td>144</td>
<td>2,251</td>
<td>144/2,251 = 6.40%</td>
</tr>
<tr>
<td>1985</td>
<td>2,251</td>
<td>2,033</td>
<td>2,251/2,033 = 111.00%</td>
</tr>
<tr>
<td>1987</td>
<td>2,033</td>
<td>1,933</td>
<td>2,033/1,933 = 105.40%</td>
</tr>
<tr>
<td>1988</td>
<td>1,933</td>
<td>1,873</td>
<td>1,933/1,873 = 102.80%</td>
</tr>
<tr>
<td>1989</td>
<td>1,873</td>
<td>1,873</td>
<td>1,873/1,873 = 100.00%</td>
</tr>
<tr>
<td>1990</td>
<td>1,873</td>
<td>1,873</td>
<td>1,873/1,873 = 100.00%</td>
</tr>
<tr>
<td>1991</td>
<td>1,873</td>
<td>1,873</td>
<td>1,873/1,873 = 100.00%</td>
</tr>
<tr>
<td>1992</td>
<td>1,873</td>
<td>1,873</td>
<td>1,873/1,873 = 100.00%</td>
</tr>
<tr>
<td>1993</td>
<td>1,873</td>
<td>1,873</td>
<td>1,873/1,873 = 100.00%</td>
</tr>
</tbody>
</table>

#### Notes:
- APWA = American Public Welfare Association
- n/a = not available

**Source:** American Public Welfare Association, unpublished data on ethnicity, transmitted May 21, 1996
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

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

* 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.

- 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.

- 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

* Only 20 states reported for 1991-1993. For earlier years, 31-38 states reported. See Table 1 for details.
### Appendix Table. APWA Count of Indian Children in State Substitute Care, by State, for Various Years, 1982-1993

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Minnesota</td>
<td>622</td>
<td>471</td>
<td>503</td>
<td>685</td>
<td>609</td>
<td>819</td>
<td>809</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Mississippi</td>
<td>3</td>
<td>4</td>
<td>7</td>
<td>4</td>
<td>1</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Missouri</td>
<td>7</td>
<td>12</td>
<td>6</td>
<td>12</td>
<td>17</td>
<td>19</td>
<td>23</td>
<td>17</td>
<td>13</td>
<td>20</td>
</tr>
<tr>
<td>Montana</td>
<td>171</td>
<td>165</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Nebraska</td>
<td>147</td>
<td>146</td>
<td>110</td>
<td>112</td>
<td>121</td>
<td>n/a</td>
<td>n/a</td>
<td>200</td>
<td>228</td>
<td>223</td>
</tr>
<tr>
<td>Nevada</td>
<td>18</td>
<td>10</td>
<td>21</td>
<td>25</td>
<td>77</td>
<td>74</td>
<td>74</td>
<td>90</td>
<td>62</td>
<td>90</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>0</td>
<td>0</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>200</td>
<td>228</td>
<td>223</td>
</tr>
<tr>
<td>New Jersey</td>
<td>n/a</td>
<td>6</td>
<td>15</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>New Mexico</td>
<td>73</td>
<td>144</td>
<td>113</td>
<td>123</td>
<td>118</td>
<td>137</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>New York</td>
<td>0</td>
<td>n/a</td>
<td>49</td>
<td>31</td>
<td>39</td>
<td>73</td>
<td>62</td>
<td>74</td>
<td>63</td>
<td>63</td>
</tr>
<tr>
<td>North Carolina</td>
<td>118</td>
<td>121</td>
<td>204</td>
<td>146</td>
<td>150</td>
<td>161</td>
<td>176</td>
<td>171</td>
<td>206</td>
<td>223</td>
</tr>
<tr>
<td>North Dakota</td>
<td>226</td>
<td>214</td>
<td>n/a</td>
<td>185</td>
<td>n/a</td>
<td>237</td>
<td>n/a</td>
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### Notes:
- Figures for this year are CRS estimates and should be used with great caution. See discussion in text.

### Sources: