was replete with examples of Indian children placed in non-Indian homes and later suffering from debilitating identity crises when they reached adolescence. This phenomenon occurred even when the children had few memories of living as part of an Indian community. For example, in testimony submitted by the American Academy of Child Psychiatry, it was stated that:

> There is much clinical evidence to suggest that these Native American children placed in off-reservation non-Indian homes are at risk in their later development. Often enough they are cared for by devoted and well intentioned foster or adoptive parents. Nonetheless, particularly in adolescence, they are subject to ethnic confusion and a pervasive sense of abandonment with its attendant multiple ramifications. Senate 1977 Hearing, supra, at 114.

See also the testimony of Dr. Joseph Westermeyer, a University of Minnesota social psychiatrist, concerning patients that he had treated, cited in Holyfield, supra, 490 U.S. at 33, n.1

> [T]hey were raised with a white cultural and social identity. They are raised in a white home. They attended, predominantly white schools, and in almost all cases, attended a church that was predominantly white, and really came to understand very little about Indian culture, Indian behavior, and had virtually no viable Indian identity. They can recall such things as seeing cowboys and Indians on TV and feeling that Indians were a historical figure but were not a viable contemporary social group.
>
> Then during adolescence, they found that society was not to grant them the white identity that they had. They began to find this out in a number of ways. For example, a universal experience was that when they began to date white children, the parents of the white youngsters were against this, and there were pressures among white children from the parents not to date these children...
>
> The other experience was derogatory name calling in relation to their racial identity...
>
> [T]hey were finding that society was putting on them an identity which they didn't possess and taking from them an identity that they did.

AAIA has frequently received inquiries from troubled Indian adolescents and adults who were placed outside of their communities as children and are seeking to reconnect with their tribes. Excerpts from one letter, reprinted in AAIA's newsletter, Indian Affairs, No. 124 (Summer/Fall 1991) at 4-5, illustrate the experiences of these children:

> Because of our youth it wasn't obvious to us that we were missing anything in our lives, but as time passed and we began school comments were made at us that aroused our suspicions of

> something not being right...Neighborhood children would ask "what are you?", "who are you?...[When I] was informed that...[my brother and I] were Indians...[a]bsolute shock and confusion dominated our every thought...Burdened with the ignorance of our culture and with the hopeless change of immediate enlightening we proceeded to identify ourselves to our observant neighbors who immediately showed their ignorance with abusive name calling, offensive gestures and demeaning remarks. We lived through these times but not without emotional trauma on our hearts and minds that we carry to this day...The emotional and psychological pain of my childhood experience cannot be imagined...

In addition, Congress heard considerable testimony on the importance of the extended family in Indian culture. As the House Interior and Insular Affairs Committee Report explained:

> [T]he dynamics of Indian extended families are largely misunderstood. An Indian child may have scores of, perhaps more than a hundred, relatives who are counted as close, responsible members of the family...The concept of the extended family maintains its vitality and strength in the Indian community. By custom and tradition, if not necessity, members of the extended family have definite responsibilities and duties in assisting in childbearing.
>
> [House Report 95-1386, 95th Cong., 2d. Sess. (July 24, 1978) at 10, 20.]

As an example, in the Choctaw language which is still widely spoken, the words for mother and father are extended to the father's sisters and mother's brothers respectively, as well as to sons of paternal great uncles, grandsons of paternal great-great uncles, uncles by marriage on the mother's side, daughters of maternal great aunts, granddaughters of maternal great-great aunts and other relatives as well. Swanton, John R., Source Material for the Social and Ceremonial Life of the Choctaw Indians, Smithsonian Bulletin No. 103 (1931) at 87. This is indicative of the fact that, traditionally, responsibility for raising a Choctaw child has been shared by many of the child's relatives.

Thus, Congress had before it evidence that in most Indian cultures, a child is considered part of a larger extended family and that placement of a child outside that family is a loss felt by the entire family.

Congress determined that a large part of the cause for this Indian child welfare crisis which was devastating Indian tribes, children and families rested with State agencies and courts. Congress found that "the States, exercising their recognized jurisdiction over Indian child custody proceedings through

administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." 25 U.S.C. 1901(5). See also statements by Rep. Morris Udall, House sponsor of the ICWA, cited in Holyfield, supra, 490 U.S. at 45, n.18, to the effect that "'state courts and agencies and their procedures share a large part of the responsibility' for crisis threatening 'the future and integrity of Indian tribes and Indian families.'" and Rep. Robert Lagomarsino, Republican co-sponsor of the ICWA who stated, in explaining his support for the ICWA, that "[g]enerally there are no requirements for responsible tribal authorities to be consulted about or even informed of child removal actions by nontribal government or private agents." 124 Cong.Rec. H 12849 (Oct. 14, 1978). The result of this systemic failure was summarized in the House Report as follows:

> (1)...many social workers, ignorant of Indian cultural values and social norms, make decisions that are wholly inappropriate in the context of Indian family life and so they frequently discover neglect or abandonment where none exists.
>
> (2) The decision to take Indian children from their natural homes is, in most cases, carried out without due process of law...Many cases do not go through an adjudicatory process at all, since the voluntary waiver of parental rights is a device widely employed by social workers to gain custody of children. Because of the availability of waivers and because a great number of Indian parents depend on welfare payments for survival, they are exposed to the sometimes coercive arguments of welfare departments.
>
> (3)...agencies established to place children have an incentive to find children to place [most notably Indian children not protected by the system].
>
> [House Report 95-1386, supra, at 10-12.]

B. Congress' Conclusions and Solutions

As a result of the testimony that it heard and the findings that it made, Congress enacted the Indian Child Welfare Act, 25 U.S.C. 1901 et seq. As was stated in Holyfield, supra, 490 U.S. at 37, 50, n.24

> 'The Act is based on the fundamental assumption that it is in the Indian child's best interest that its relationship to the tribe be protected'...[and] 'seeks to protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society'. (emphasis added, citations omitted)

See also 25 U.S.C. 1902 which states that the purposes of the Act are to "protect the best interests of Indian children and to promote the stability and security of Indian tribes..."

The primary mechanism utilized by Congress to ensure the preservation of that child-tribal relationship was to "curtail state authority", Holyfield, supra, 490 U.S. at 45, n.17, and to strengthen tribal authority over child welfare matters. As the Holyfield court noted, "It is clear from the very text of the ICWA, not to mention its legislative history and the hearings that led to its enactment, that Congress was concerned with the rights of Indian families and Indian communities vis-a-vis state authorities..." Id. at 44-45. Accordingly, the ICWA includes a number of provisions recognizing and strengthening the tribal role in making decisions about Indian children. See e.g.

- 25 U.S.C. 1911(a) (exclusive tribal jurisdiction over Indian children resident or domiciled on the reservation);

- 25 U.S.C. 1911(b) (transfer of off-reservation state court proceedings to tribal court);

- 25 U.S.C. 1911(c) (recognizing the right of Indian tribes to intervene in all state court child custody proceedings involving children who are members or eligible for membership in the tribe);

- 25 U.S.C. 1911(d) (requiring state courts to accord tribal court judgments full faith and credit);

- 25 U.S.C. 1912(a) (requiring notice to Indian tribes by state courts in involuntary child custody proceedings);

- 25 U.S.C. 1914 (providing Indian tribes with the right to challenge state placements that do not conform with the Act's requirements in federal court);

- 25 U.S.C. 1915(c) (recognizing, as a matter of federal law, tribally-established placement preferences for state placements of off-reservation Indian children);

- 25 U.S.C. 1915(e) (recognizing right of Indian tribes to obtain state records pertaining to the placement of Indian children); and

- 25 U.S.C. 1919 (authorizing tribal-state Indian child welfare agreements).

Moreover, the ICWA includes a number of other provisions, in addition to the provisions described above, which are designed to keep Indian families intact and directly or indirectly to protect the relationship between the tribe and those individuals eligible

for membership in the tribe. See, e.g.,

- 25 U.S.C. 1912(e) and (f) (establishing substantive standards for involuntary foster care placement of an Indian child or termination of an Indian parent's parental rights which exceed those provided under state law);

- 25 U.S.C. 1915(a) (requiring that adoptive placements of Indian children under state law be made preferentially with the child's extended family, other members of the Indian child's tribe or other Indian families, in that order, absent good cause to the contrary);

- 25 U.S.C. 1915(b) (requiring that foster care placements of Indian children under state law be made preferentially with the child's extended family, a tribally-licensed foster home, an Indian foster home licensed by a non-Indian entity or a tribally-approved or Indian-operated facility, in that order, absent good cause to the contrary);

- 25 U.S.C. 1915(d) (requiring that the cultural and social standards of the Indian community must be applied by the state court when it applies the placement preferences); and

- 25 U.S.C. 1917 (providing adult Indian adoptees with the right to access their adoption records for the purpose of establishing their Indian tribal membership).

Many of the sections of the ICWA and a major part of the problem which Congress sought to address involved involuntary removals of children from their families and tribal communities and placement of such children into both foster care and adoptive placements. See, e.g., 25 U.S.C. 1912. However, it is also clear that "voluntary" adoptions of Indian children were likewise of great concern to Congress based upon the evidence it had heard. As the United States Supreme Court specifically found, the tribe and child have an interest in maintaining ties independent of the natural parents' interests and, thus, "Congress determined to subject such [voluntary] placements to the ICWA's jurisdiction and other provisions, even in cases where the parents consented to an adoption, because of concerns going beyond the wishes of individual parents." Id. at 49-53. As explained in In re Adoption of Child of Indian Heritage, 543 A.2d. 925, 931-933 (N. J. 1988), a case cited approvingly by the Holyfield court at 490 U.S. at 51:

> The effect on both the tribe and the Indian child of the placement of the child in a non-Indian setting is the same whether or not the placement was voluntary. Furthermore, the economic factors that led Congress to provide safeguards against induced voluntary relinquishments to state agencies are equally implicated in private placement adoptions ...Finally, while an unwed mother might have a legitimate

> and genuine interest in placing her child for adoption outside of an Indian environment, if she believes such a placement is in the child's best interests, consideration must also be given to...Congress' belief that, whenever possible, it is in an Indian child's best interests to maintain a relationship with his or her tribe.
>
> [543 A.2d at 932]

See also House Report No. 95-1386, supra, at 11 (recognizing that many "voluntary" consents are not truly voluntary).

Thus, the ICWA specifically prohibits relinquishment of an Indian child for adoption for at least ten days after birth. 25 U.S.C. 1913(a). Moreover, such consents must be executed before a court of competent jurisdiction and a Court taking a voluntary consent to the termination of parental rights must determine that the consequences of the consent "were fully understood by the parent or Indian custodian", including, if necessary, the use of an interpreter to explain the consequences of the consent in the parent's native language. 25 U.S.C. 1913(a). This is to ensure that voluntary relinquishments are truly voluntary.

Moreover, the jurisdictional provisions in 25 U.S.C. 1911(a) and (b) are fully applicable to voluntary proceedings. Thus, only the tribal court, and not the State court, is a "court of competent jurisdiction" for the purposes of taking a consent to the termination of parental rights when the child is a reservation resident or domiciliary or a ward of the court. Holyfield, 490 U.S. at 52, n. 26. In addition, tribes are provided with the right to intervene in voluntary proceedings, 25 U.S.C. 1911(c), and the placement preferences in 25 U.S.C. 1915 apply to voluntary proceedings. The collective intent of these sections was to ensure "that Indian child welfare determinations [including adoptive placements] are not based on 'a white, middle-class standard, which, in many cases, forecloses placement with (an) Indian family." Holyfield, supra, 490 U.S. at (1602). 25 U.S.C. 1914.[1]

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[1] The description of the provisions of the ICWA included herein is based upon the most widely accepted interpretations of what these provisions mean both in practice and as applied by the courts. It is true that there may be individual cases that have interpreted a given section differently than may be described in this testimony. Because it would be far beyond the scope of this testimony to provide an exhaustive analysis of what the courts have done with every section of the ICWA, I have limited my analysis to the summary form in the text of my testimony. However, should any testimony be submitted which raises questions which the Committee would like to have answered, I would be happy to provide such additional legal analysis as would be desired.

Thus, based upon the compelling testimony that it heard, Congress enacted the ICWA in order to (1) provide for procedural and substantive protection for Indian children and families and (2) recognize and formalize a substantial role for Indian tribes in cases involving involuntary and voluntary child custody proceedings, whether on or off reservation.

III. S. 569 and H.R. 1082
A fair and reasonable approach to refining the ICWA

During the last few years, a very small number of "high profile" voluntary adoption cases have come to the attention of Congress. These cases involved adoptive placements with mostly non-Indian families that were challenged sometime after placement occurred by Indian tribes or natural parents who invoked the protections of the ICWA. These cases resulted in extended court proceedings which caused great distress to all concerned -- the child, adoptive parents, natural nuclear and/or extended family and the Indian tribe. Even though AAIA would emphasize that such cases constitute a very small number of the overall cases decided under ICWA each year, AAIA agrees that it would be desirable to reduce the number of such cases even further if this is possible.

However, it is essential that any effort to address these cases do so in the context of the continued recognition of the essential role of Indian tribes in ICWA proceedings -- not only because of tribal sovereignty issues, but also because it is in the best interests of Indian children. Thus, Congress must continue to resist efforts to respond to these contentious adoption cases by weakening the ability of Indian tribes to invoke the ICWA.

Rather, we urge Congress to embrace the approach incorporated in S. 569 and H.R. 1082. These bills are the result of a year-long process which began in June 1995 with a dialogue between attorneys and representatives from tribes, Indian organizations and adoption attorney organizations. Out of that dialogue, a consensus emerged as to how these troublesome cases might be addressed. At the National Congress of American Indians (NCAI) Mid-Year convention last June, tribal representatives from across the nation considered the consensus bill developed by this working group, as well as other draft bills, including a modification of the consensus bill developed by the Aberdeen Area Tribes at a meeting in Pierre, South Dakota. After two days of intense discussions, NCAI prepared and approved an ICWA amendments bill for introduction in Congress.

This NCAI-bill became the basis for S. 1962, introduced by Senator John McCain and H.R. 3828, introduced by Rep. Don Young in 1996. These bills, which have now become S. 569 and H.R. 1082 in the 105th Congress, would:

- Require notice to Indian tribes in all voluntary proceedings.

- Require that if a Tribe is to intervene in voluntary termination proceedings, it must do so within 30 days of receiving notice in the case of voluntary termination of parental rights and within 90 days of receiving notice in the case of a particular adoptive placement.

- Limit parents' rights to withdraw consent to an adoption to 6 months after relinquishment of the child or 30 days after the filing of an adoption petition, whichever is later; if an adoption is finalized before 6 months, that would also end the period during which consent may be revoked.

- Provide for criminal sanctions for anyone who assists a person to lie about their Indian ancestry for the purposes of applying the ICWA.

- Allow state courts to enter enforceable orders providing for visitation or continued contact between tribes, natural parents, extended family and an adopted child.

- Require attorneys, public and private agencies to inform Indian parents of their rights under ICWA.

- Require that tribes certify that a child is a member or eligible for membership in the tribe when the tribe intervenes in a child custody proceeding.

- Clarify tribal court authority to declare children wards of the tribal court.

The changes to ICWA proposed by S. 569 and H.R. 1082 would improve the voluntary adoption process for all concerned -- Indian children, tribes and families, as well as adoptive parents. This is true for several reasons.

First, providing notice to Indian tribes will address one of the major causes of the difficult legal custody disputes that have arisen in the voluntary adoption context. Because the ICWA does not currently include a specific notice requirement to Indian tribes in the case of voluntary adoptions, Indian tribes frequently do not learn of such adoptions until some time after the initial placement has been made. Particularly in the case of an off-reservation birth to an unwed mother -- a common circumstance in these cases -- there may be a significant delay in such information becoming known within the tribal community. Thus, even where an Indian tribe acts promptly upon learning of the placement, a situation may have developed where the child has already spent a significant amount of time in the adoptive placement before the tribe has intervened.

Providing tribes with prompt notice in all cases will

facilitate a prompt tribal response when the tribe believes that a particular placement would be in the child's best interest. Notice will help to enhance the possibility that Indian children placed for adoption by their natural parents will be expeditiously placed in good homes, while at the same time ensuring that children are not removed from their extended families and tribes in cases where such permanent homes are available within their extended families or tribal communities. Couples that may have been identified as prospective adoptive parents will know before placement (or within a very short time thereafter) whether a member of the child's family or tribe has an interest in adopting the child, thereby lessening the risk that a child will be transferred to a new placement after an extended time in an initial placement. AAIA would respectfully submit that those who would oppose such notice are not really concerned about ensuring good homes for Indian children. Rather they are simply seeking to find available adoptable children for non-Indian adoptive parents. Congress has an obligation to enhance the possibility that Indian children who need placements are placed in good homes as soon as possible; it does not have the obligation to ensure that all persons wanting to adopt are able to get a child without regard to that child's future connection with his or her heritage and natural family. At present, several states have explicitly recognized and successfully implemented a requirement that notice be provided in voluntary proceedings. See, e.g., Wash. Rev. Code Ann. 13.34.245(3), (5); 26.33.090(2); 26.33.110(2); 26.33.240(1) (West Supp. 1989); Minn. Stat. Ann. 257.352 (2), (3); 257.353(2), (3) (West Supp. 1989); Okla. 10 O.S. 1991, section 40.1 (as amended in 1994); Mich. Court Rules 5.980(A). Moreover, in other states, it appears to be standard practice to notify tribes of voluntary proceedings. See, e.g., B.R.T. v. Executive Director of the Social Services Board of North Dakota, 391 N.W.2d 594, 595 (N.D. 1986); In re Adoption of Halloway, 732 P.2d 962, 963 (Utah 1986). Thus, notice to Indian tribes in voluntary proceedings is entirely feasible and desirable.

At the same time, under these bills, if a tribe does not take action within a specified period of time, the tribe will be barred from intervention. Prospective adoptive parents and children will know the time frames that are applicable when the placement is made and will have assurance that the adoption can go forward without later action by the tribe which may disrupt the adoption. The time limits on parental withdrawal of consent serve the same purpose in terms of a parental challenge post-placement. Thus, prospective adoptive parents' fears that placements will be disrupted at some unknown point in the future, which may have a chilling effect upon adoptions, should be alleviated by this bill. The potential for a child to be transferred from an adoptive placement after an extended period of time in that placement should also be minimized.

Likewise, requiring that parents be informed of their rights under ICWA should decrease the number of disrupted placements. Providing natural parents with this information increases the

chances that a parent will fully consider his or her placement options at the very beginning of the process. The combination of notice to the tribe and full information to natural parents will help to ensure that a young, vulnerable Indian parent has the balanced information available which that parent needs to make an informed decision. When only an adoption attorney or agency is involved with a young parent considering adoption, there is a substantial likelihood that extended family options will not be explored. Ensuring that parents have full information from the outset will help to lessen the number of later disputes which arise because the parent was confused and unclear of the possible options that were available to her when she placed the child for adoption.

The possibility of open adoption as an option in all proceedings, another part of these bills, may also facilitate harmonious placements of children and avoid conflict in some cases. State courts do not always have authority currently to recognize open adoptions, even where the parties have reached an agreement.

In addition, the amendments provide more assurance that all parties will "play by the rules". The criminal sanctions will discourage corrupt attorneys and others from subverting the ICWA. There is considerable anecdotal evidence that natural parents are often told by adoption attorneys and agencies that they should not reveal that the child is of Indian heritage in order to avoid the application of the Indian Child Welfare Act. Such deceptions have been the cause of a number of hotly contested cases which occurred because of the initial incorrect determination that the ICWA should not be applied to the child in question.

Similarly, the provisions dealing with tribal certification of membership and tribal court wardships are a measured effort to provide assurances to other parties that tribes are following a specified set of rules as well. The certification requirement is designed to ensure that tribes are following the membership rules which they have established. The wardship section clarifies the applicable jurisdictional framework which governs tribal court wardships.

Thus, although there are other provisions which AAIA would like to see in an ICWA bill ideally -- such as a provision disavowing the "existing Indian family exception" -- AAIA is very supportive of enactment of the bill in its current form because it believes that this is a carefully crafted consensus bill that will improve the application of the ICWA in the voluntary adoption context to the benefit of Indian children, families and tribes, as well as adoptive parents. It believes that the amendments will advance the valid goals of decreasing the number of extended court disputes which will arise under the ICWA and ensuring the best possible permanent placements for Indian children, while continuing to recognize that tribal involvement with Indian children is in their best interest. AAIA urges you to enact this legislation.

ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.:

SUPPLEMENTAL TESTIMONY FOR THE RECORD OF THE JUNE 18, 1997 JOINT HOUSE-SENATE HEARING ON S. 569 AND H.R. 1082

Chairmen Campbell, Young and members of the Senate Committee on Indian Affairs and House Resources Committee. The Association on American Indian Affairs, Inc. (AAIA), a national non-profit citizens' organization headquartered in South Dakota, previously submitted testimony in regard to S. 569 and H.R. 1082 for the June 18, 1997 hearing record. It would like to submit this supplemental testimony for the record to respond to the legislative proposal offered by Rep. Deborah Pryce (R-Ohio) in her testimony before the Committees on June 18, 1997. Rep. Pryce's approach -- ICWA does not apply unless "at least one parent maintains significant social, cultural, or political ties to the tribe of which either parent is a member" -- is anti-family, destructive of tribal sovereignty, would cause enormous litigation and delay permanent placements, and is probably unconstitutional.

Currently, although a few courts have adopted the so-called "existing Indian family exception", see Matter of Adoption of Baby Boy L, 643 P.2d 168 (Kan. 1982) wherein the test was first recognized, most courts have held that the application of the Indian Child Welfare Act itself is dependent upon the presence of two elements: (1) a state court "child custody proceeding" as that term is defined in 25 U.S.C. 1903(1), and (2) an "Indian child" as that term is defined in 25 U.S.C. 1903(4), as the subject of the proceeding. See Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 42 (1989); In re the Custody of S.B.R., 719 P.2d 154, 155-156 (Wash. Ct. App. 1986); Matter of Kreft, 384 N.W.2d 843, 845 (Mich. Ct. App. 1986); Matter of Appeal in Maricopa County, 667 P.2d 228, 231 (Ariz. Ct. App. 1982); A.B.M. v. M.H., 651 P.2d 1170 (Alaska Sup. Ct. 1982), cert. den., sub nom Hunter v. Maxie, 461 U.S. 914 (1983); In the Matter of the Adoption of a Child with Indian Heritage, 111 N.J. 155 (1988). "Indian child" is defined under the ICWA to mean "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. 1903(4).

The Pryce proposal would narrow the coverage of the Act significantly by reclassifying many children currently considered to be Indian as non-Indian for the purposes of the Act. It would exclude from the Act children whose parents do not (in the opinion of a state court or agency) maintain a significant social, cultural or political affiliation with an Indian tribe notwithstanding that they are members. By excluding such children, the Pryce proposal directly undercuts the ICWA in very substantial ways.

A. The Pryce proposal is anti-family.

The ICWA recognized the vital importance of the extended family in Indian society. Yet, the main impact of Rep. Pryce's

proposal is to make a child's relationship with his or her extended family legally irrelevant and readily terminated. Under the arbitrary Pryce test to determine which children are covered by ICWA -- whether a parent has a social, cultural or political affiliation with an Indian tribe at the time of the child custody proceeding -- it does not matter if all of the child's grandparents, aunts, uncles and cousins are actively involved with both the child and the tribe. If the child's parents are not involved at the time of the proceeding, ICWA does not apply to that child. If the ICWA is not applied, the main impact is to deprive the extended family of the right to be considered as preferred placements for the child. For a Congress that has actively sought to promote pro-family policies, it would be particularly indefensible to so discount the role of Indian grandparents and extended family members, particularly in view of the fact that the role of the extended family in Indian society is so critical.

Indeed, the value of maintaining relationships between an Indian child and his or her grandparents or other relatives does not become unimportant by reason of a parent's alienation from his or her tribe. Indian parents who place their children for adoption or become involved with the child welfare system may very well be alienated from their culture. However, this does not mean that continued alienation is in the best interests of their children. The empirical evidence is that maintaining extended family and tribal relationships is in the child's best interests. It is for these reasons, among others, that organizations like the American Psychological Association and National Association of Social Workers opposed Rep. Pryce's proposal in the last Congress.

B. The Pryce proposal would inappropriately condition the application of ICWA upon state judgments of "Indianness", rather than tribal determinations of membership pursuant to their inherent sovereignty.

A primary purpose of the ICWA was to curtail state authority over Indian children in state proceedings because state insensitivity to Indian cultural values had led to massive numbers of these children being placed outside of their homes. In direct contravention of this intent, the Pryce proposal would restore enormous power to state social workers and courts to once again make their own determinations about Indian culture which will be determinative in deciding whether ICWA applies. Even if affiliation were to be viewed as a valid test, there is no reason to believe that state agencies and judges generally will have the experience and sensitivity to evaluate tribal identity. See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.32 (1978) which recognized the "vast gulf between tribal traditions and those with which...courts are more intimately familiar."

There is no valid reason to substitute the judgment of a state court judge in regard to a child's "Indianness" for the tribe's

judgment based upon its own membership rules. It is a well settled principle that Indian tribes have the authority to define their membership and that this authority is integral to the survival of tribes and the exercise of their sovereignty. Santa Clara Pueblo v. Martinez, supra, 436 U.S. at 72 n.32.

C. The Pryce proposal would not achieve its stated purposes.

1. The adoption process would not be simplified.

The standard for coverage of the ICWA in the Pryce proposal -- maintenance of a "significant social, political or cultural affiliation" with the tribe -- is not defined. What is social, cultural or political affiliation? What evidence proves or disproves such affiliation? What level of affiliation is significant? It is likely that the meaning of every word in this test would be litigated repeatedly and that the Pryce proposal would cause an enormous increase in litigation and not a decrease.

2. State agencies and court would be overwhelmed by implementation of the new standard.

Because Rep. Pryce's proposal would apparently affect the application of ICWA in involuntary foster care and termination of parental rights cases in addition to voluntary adoptions, her proposal would require the reevaluation of thousands of child welfare cases across the country to determine whether a parent of the child maintained significant social, cultural or political ties with the tribe. This will place an enormous burden upon state social services agencies and courts, thereby delaying permanent placements. Indeed, the Attorney Generals of four Western states -- New Mexico, Oregon, Washington and Nevada -- strongly opposed a similar proposal in the last Congress.

3. Rep. Pryce's proposal goes far beyond adoption cases involving children of "limited" Indian ancestry which gave rise to the legislation

a. It will exclude bona fide Indian children

The imposition of a "parental/tribal affiliation test" would exclude many bona fide Indian children and parents from the Act. The "affiliation" test would exclude even full-blooded Indians whose extended family is fully involved in tribal affairs and whose parents may have previously been closely connected with their tribe if, at the time of the proceeding, the child's parents happen to be alienated from their tribe(s) in the view of a state court judge.

b. It applies to involuntary dependency proceedings

Even though the only "problem" cases cited by Rep. Pryce are

voluntary adoption cases, there is every indication that she intends her proposal to apply to involuntary dependency cases as well as adoption cases. Depriving troubled Indian families of the support and assistance of their tribes in the involuntary context would be particularly devastating. There are many examples where troubled alienated individuals have been "saved" when they reunited with their tribe and tribal community through the application of the ICWA. For no apparent reason, Rep. Pryce would prevent the tribe from making these positive interventions in the future by depriving coverage of the Act in an involuntary proceeding where the parent lacks a significant affiliation with the tribe at the time of the proceeding. Moreover, as noted, applying this standard to involuntary proceedings is likely to overwhelm and disrupt existing state systems and a number of State Attorney Generals opposed a similar proposal in the last Congress.

4. It is a fallacy that the Pryce proposal will free up Indian children "languishing" in foster care for adoption

The basic situation in terms of Indian children is not similar to that of other minority children such as has given rise to the Multi-Ethnic Placement Act recently passed by Congress, P.L. 103-382. There are not large numbers of Indian children languishing in foster care because of inadequate numbers of Indian families available to adopt these children. In the "disputed" cases which have been cited by Rep. Pryce, there have (by definition) been family and tribal members eager to adopt these children. Moreover, tribes can normally find placements for their children when given the opportunity. This is what the ICWA is all about -- in essence, it prevents discrimination against Indian people in the placement of their own children.

D. The Pryce proposal is probably unconstitutional.

The Pryce proposal would replace a bright line political test -- membership in an Indian tribe as the linchpin for the coverage of the Act -- with a multi-faceted test that transforms the classification into more of a racial identification test, than a political test! This not only intrudes upon tribal sovereignty, but may be unconstitutional since the legitimacy of Indian-specific legislation rests upon the fact that such legislation is based upon a political classification and not a racial classification. See, e.g., Morton v. Mancari, 417 U.S. 535 (1974).

CONCLUSION

The Senate Committee on Indian Affairs and House Resources Committee should reject the legislative proposal advanced by Rep. Pryce at the June 18 hearing.

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Washington D.C. 20510-0605

Dear Senator Campbell:

The Indian Child Welfare Act is regarded by this Tribe as one of the most important pieces of Indian legislation ever enacted and we've watched with some concern as amendments have been proposed. The amendments as currently drafted appear to consider the concerns of non-tribal people while strongly affirming the responsibility of tribal governments to protect the children of the tribe. The amendments seem to us to be well-balanced. What continues to concern us is that in Alaska there is not a universal understanding or agreement about how ICWA applies to Alaska tribes. It would be beneficial to all concerned if language was added that makes it clear that Alaska tribes are the same as all other tribes with regard to ICWA.

Tanana is a small Athabascan Indian tribe located at the confluence of the Yukon and Tanana rivers approximately one hundred and fifty air miles from Fairbanks. Like many remote Alaska Native villages, child welfare in Tanana has always been the responsibility of the Tribal government. Although P.L.280 imposes concurrent jurisdiction in civil issues, the reality is that the State actually lacks the financial resources and infrastructure to provide the most basic services, including police, judicial, and social services, in the many remote Alaska Native communities. The State has never been able to provide even minimal child protective and related family services in Tanana; such services have been provided by the Tribal government. In 1978 the Tribe formalized traditional child protective practices through the creation of a Tribal Court ordinance. A Codification of Children's Ordinances of the Tribe was compiled and formally adopted; ordinances and regulations for the licensure of Tribal foster homes put in place. The Tribe focuses on intervention and prevention. The Tribal social services staff utilizes extended family support systems and Tribal foster care. Tribal foster care has been provided to more than fifty children since 1984 at no cost to the State of Alaska.

ICWA compelled states, including Alaska, to recognize the unique responsibilities that tribal governments have with regard to the well-being of tribal children. As a result, the Tanana Tribal Council and the State of Alaska entered into a State/Tribal ICWA Agreement in 1988. This agreement allows the Tribe and the State of Alaska Division of Family Services to coordinate services and work together on ICWA and family reunification issues. With this agreement, the tribal social services office has been able to share information, successfully intervene, and create family reunification plans to prevent the breakup of Indian families. Tribal social workers have even provided emergency child protection services for non-tribal children who are living in this community when State social workers have been too busy to travel to the village. Unfortunately, such agreements between tribes and the State are rare in Alaska, and not universally understood or even known about by all State social workers.

The issue is further clouded by the adversarial stance taken by factions within the State government with regard to Indian tribes in Alaska; some social workers are unsure as to whether

or not these jurisdictional disputes also apply to ICWA. In the eyes of the Tribe, the issues are not the same. The jurisdiction exercised by the tribe to protect our children is based on the codification of children's ordinances of the Tribe, which defines ICWA jurisdiction in terms of tribal citizenship. Members of this tribe sometimes leave the village and move to urban areas for employment or education or other reasons. Often this move is temporary or seasonal, with families returning to live in the village while maintaining close ties with the village. Tribal citizenship is no more lost when a tribal member moves to Fairbanks, than US citizenship is lost if a US citizen moves temporarily to France. Nor is the tribal government relieved of the responsibility for the well-being of that tribal member, particularly if the tribal member is a child. If ICWA is interpreted by State agencies in Alaska (as it has been from time to time) to allow tribes jurisdiction only when a child is actually domiciled in a village, the ability of the tribe to protect its children is impacted. These instances create a diversion in terms of financial resources and staff focus as tribes are forced to utilize the legal system to reaffirm the tribal responsibility for Indian children under ICWA.

We are very concerned that the issue of protecting Alaska Native children will be lost or put on hold until other Indian jurisdictional issues are resolved in Alaska. This need not happen if language is included in the amendments to ICWA that make it clear that Alaska tribes are the same as any other tribe in the matter of Indian Child Welfare.

Tribal participation is vital to child protection in Alaska, and language that will allow State and the tribes to focus their energies and scarce resources on the children rather than on litigation and dissent is necessary. Please consider this in light of the amendment process.

Sincerely yours.

Carla Klooster Bonney, Director
Tribal Health and Social Services Office

Faith M. Peters

Faith M. Peters, President
Tanana Tribal Council

Amendment

The Indian Child Welfare Act is hereby amended by adding the following new section at the end thereof:

"Notwithstanding any other provision of law, the provisions of 25 U.S.C. 1911(b) shall apply to any Alaska Native village to the same extent, and in the same manner, as that provision applies to any other Indian Tribe."

Report Language

This amendment is intended to clarify the law with respect to the application of the Indian Child Welfare Act in Alaska. It specifies that section 1911(b), which provides for what is known as "referral jurisdiction," applies currently to all Alaska Native villages in the same manner as it does to all other Indian tribes. Section 1911(b) establishes a form of concurrent jurisdiction for tribes and states, a jurisdiction that is available under the Act for all federally recognized tribes including "Alaska Native villages," as noted in section 1903(8) of the Act. The amendment makes clear that application of section 1911(b) to Alaska Native villages does not require that the villages invoke the reassumption provision of section 1918 of the Act - which applies to tribes seeking to reassume exclusive jurisdiction under 1911(a). The amendment is in conformity with the 1991 ruling of the United States Court of Appeals for the Ninth Circuit in the case of *Native Village v. Alaska*, 944 F.2d 548 (9th Cir. 1991).

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 29, 1997

Honorable Ben Nighthorse Campbell
Chairman
Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to provide the views of the Department of Justice on S. 569, and its companion bill H.R. 1082, which would amend the Indian Child Welfare Act of 1978.

As the United States has rarely been party to litigation under the statute, the Department of Justice's experience with the Indian Child Welfare Act, 25 U.S.C. 1901 et seq. ("ICWA") is limited. However, we have reviewed the bill in light of our experience with civil and criminal enforcement, the United States' commitment to supporting tribal self-government, and basic principles of statutory construction. We hope the following comments will be helpful to the Committee in considering the bill.

The Department supports S. 569, H.R. 1082, and the important purposes of ICWA to promote the best interests of Indian children and the stability and security of Indian tribes and families. We support the companion bills because they would clarify ICWA's application to voluntary proceedings, establish some deadlines to provide certainty and reduce delay in custody proceedings, and strengthen federal enforcement tools to ensure compliance with the statute in the first instance. Also, the provisions for adequate and timely notice to Indian tribes and Indian parents in S. 569 and H.R. 1082 would increase the likelihood of informed decision-making by parties to the adoption or foster placement.

The provisions in the proposed legislation amend ICWA in a manner that is both respectful of tribal self-government and conducive to certainty and timeliness in voluntary adoptions of Indian children. We understand that S. 569, and its companion bill H.R. 1082, reflect a carefully crafted agreement between Indian tribes and adoption attorneys designed to make Indian child adoption and custody proceedings more fair, swift, and certain.

We appreciate the efforts that you, Chairman Young, and your respective Committees have made to propose amendments to strengthen ICWA. If we may be of additional assistance, please do not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

Andrew Fois
Assistant Attorney General

cc: Senator Daniel Inouye
Vice Chairman

MISSISSIPPI BAND OF CHOCTAW INDIANS

TRIBAL OFFICE BUILDING
P. O. BOX 6010
PHILADELPHIA, MISSISSIPPI 39350
TELEPHONE (601) 656-5251

1997 JUL -9 PM 3:06

July 7, 1997

Honorable Ben Nighthorse Campbell
Chairman
Senate Committee on Indian Affairs
Washington, DC 20510-6450

Dear Senator Campbell:

I am writing to thank you for your kind invitation to testify before the Senate Committee on Indian Affairs on S.569, the amendments to the Indian Child Welfare Act. Unfortunately, tribal matters prohibited my travel to Washington at that time.

However, had I testified, I would have reiterated, in the strongest possible terms, my support for S.569. Last year, Indian Country, as a whole, was consumed by the emotionally charged and terribly difficult matter of Indian child adoptions. My own tribe, in the ***Holyfield*** case, was forced to confront the issue and, having secured a U.S. Supreme Court ruling granting jurisdiction to the tribe, made what we then — and continue to do so — believed to be in the best interest of the children who are members of our tribe. It was precisely because of this experience that I believe the terms of S.569 will, to the degree that we can, best protect the futures of Indian children, their birth and adoptive parents, and their tribes.

I am grateful for your support of this legislation and for your leadership in moving it forward for consideration in this Congress.

Sincerely,

Phillip Martin
Tribal Chief

PM:*tim*

c: Senator Thad Cochran
Senator Trent Lott

FRANK H. MURKOWSKI
ALASKA
COMMITTEES:
CHAIRMAN
ENERGY AND NATURAL RESOURCES
FINANCE
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August 6, 1997

Governor Tony Knowles
State of Alaska
P.O. Box 110001
Juneau, AK 99811

Dear Governor Knowles:

On July 30 the Senate Indian Affairs committee marked up and passed out of committee S. 569, a bill to amend the Indian Child Welfare Act (ICWA) of 1978. I voted for passage of the bill out of committee. I did not offer at this time the enclosed amendment language to the bill, which some Alaskan attorneys brought to my attention. As you know, upon my request for the State's position last year, John Katz sent me a letter in which he wrote that the State "did not oppose" a substantially similar amendment. Martha Stewart of your office today informed my staff that the State has now taken a slightly more affirmative position, namely, if I would like to offer the language, then the State would support my efforts. As usual, Martha gave us a prompt response, and I and my staff appreciate her conscientious work.

Before I can consider whether to offer the enclosed language as an amendment to the bill when the full Senate takes it up for consideration, I need to know the State's position on the language. The language would effectively nullify three Alaska Supreme Court cases on the issue of jurisdiction of Indian Child Welfare Act cases in Alaska. As the legislation may have great impact on Alaska Native children and the people, mostly Alaskans, that are most interested in their well-being, I do not think it is appropriate for me to offer the amendment without having an informed position from the State.

I would like to know if you want me to offer the enclosed language. I would of course also like to know if you support S.569, with or without this proposed language. In addition, I would like an explanation of the procedure for adoption and child custody proceedings of Alaska Native children in Alaska, and how they are affected by the Indian Child Welfare Act of 1978. Can the actions of social service workers determine the court of jurisdiction over these cases? Does the answer to this question depend on whether the child or social worker is in a rural or urban area? What criteria causes an Alaska Native child to be covered by this act? How does the split in the decisions of the Alaska Supreme Court and federal courts affect the application of ICWA in Alaska? Does this judicial split cause hardships for some adoption and child custody cases? Would the addition of the enclosed language to the bill alleviate the hardships, if they do exist? Has the State taken any actions, such as cooperative agreements with Native villages and their councils, that have facilitated the application of ICWA in Alaska, in ways that may not be apparent from simply reading the Act? Lastly, please feel free to provide me with additional information that will help me to evaluate the potential impact of the proposed language on S.569.

In sum, I would like to have a substantive position on the amendment to ICWA. It is in the best interest of Alaska Native children and the State of Alaska to have this dialogue before the Senate and Congress acts on this important legislation.

Thank you for your immediate attention to this matter.

Sincerely,

Frank H. Murkowski
United States Senator

cc: The Honorable Ben Nighthorse Campbell
The Honorable Daniel Inouye

Amendment

The Indian Child Welfare Act is hereby amended by adding the following new section at the end thereof:

"Notwithstanding any other provision of law, the provisions of 25 U.S.C. 1911(b) shall apply to any tribe which became subject to state jurisdiction pursuant to the Act of August 15, 1953, to the same extent, and in the same manner, as that provision applies to any other Indian Tribe."

Report Language

This amendment is intended to clarify the law with respect to the application of the Indian Child Welfare Act to tribes in states covered by Public Law 83-280. It specifies that section 1911(b), which provides for what is known as "referral jurisdiction," applies to all such tribes in the same manner as it does to Indian tribes in other states. Section 1911(b) establishes a form of concurrent jurisdiction for tribes and states, a jurisdiction that is available under the Act for all federally recognized tribes. The amendment makes clear that application of section 1911(b)'s referral jurisdiction does not require that a "P.L. 280" tribe first invoke the reassumption provision of section 1918 (which applies to tribes seeking to reassume exclusive jurisdiction under 1911(a)). The amendment is in conformity with the rulings of the courts of appeals in the Eighth and Ninth Circuits, see, *Walker v. Rushing*, 898 F.2d 672 (8th Cir. 1990); *Village v. State*, 944 F.2d 548 (9th Cir. 1991).

\DOCS\T..\ICWA\DFT4.L..

July 2, 1997

Chairman Ben Nighthorse Campbell
Senate Indian Affairs Committee
838 Senate Hart Office Building
Washington, DC 20510

Dear Chairman Campbell:

We are pleased to provide this statement for the record of the Joint Hearing with the House Committee on Resources on H.R. 1082 and S. 569, bills which would amend the Indian Child Welfare Act of 1978.

First of all, we are concerned that, apart from Rep. Pryce, the public witnesses invited to appear before you at the Joint Hearing were all in favor of the proposed legislation. In fact, the National Council For Adoption went so far as to request the opportunity to offer testimony both verbally and in writing but was refused. With all due respect, we do not believe that a truly democratic process was used and that therefore the legislative history for these bills is less useful than it should have been. In effect, one side of the debate was denied the forum of the Joint Hearing to present its views. It is one thing to differ and quite another to deny others the opportunity to present their views. Not just the public but the members of both Committees have the right to hear all sides on the important and complex issues which are contained in this legislation. We also wish to point out that this same approach was taken by the Senate in its hearing last year: apart from Members of Congress, the only witnesses the Committee allowed to testify were those that supported the legislation.

Secondly, nothing that appears in this statement for the record can have the potential educational impact of oral testimony, and the give and take that usually accompanies such testimony. By that, I mean that the representatives of the media who were present at the hearing were, with the exception of Rep. Pryce's testimony and comments, not allowed to judge for themselves if the other side of the debate had anything worthwhile to offer. The general public will not be reading the printed record of the Joint Hearing, when it is published.

The reason we wish to make a point about the exclusion of witnesses who oppose these bills is that in the recent hearing it was claimed that the adoption community and adoption attorneys endorse H.R. 1082 and S. 569. The truth is that some of those in the

adoption community and some adoption attorneys endorse these bills. Merely because an organization's Board has endorsed legislation does not mean that every member of that organization has endorsed it. Indeed, it is our contention that the minority of attorneys who are concerned with adoption matters specifically and family law generally endorse these bills. The majority of attorneys not only disapprove of these bills, they would prefer that ICWA itself be repealed. As for adoption agencies, this very diverse group of organizations does not take a common stand on any issue. We do state that the majority of private, not-for-profit agencies are opposed to these two bills. The Congress should be clear, therefore, that a minority of the adoption community supports these bills and the majority opposes these bills.

Finally, here are some brief comments outlining some of our concerns with the legislation.

First, we wish to associate ourselves with two of the comments made by Rep. Pryce. She said that in her opinion, as someone who had been a sitting judge, that the legislation was very complicated and complex. She also said that she believed the legislation, if it becomes law, will lead to a great deal of litigation. Specifically, she said the legislation will make a lot of business for a lot of lawyers, and make a lot of lawyers rich.

Second, we wish to add that two of the major concerns we had with last year's legislation, as it passed the Senate, are still present. The legislation would put into federal law, for the first time, a court-enforceable right of visitation for the birth parents, the extended family and the tribe. The legislation would also codify the expansion of ICWA to cover all voluntary adoptions.

In terms of the court-enforced visitation provision, as the hearings last year and this make clear, the intention is to encourage more bargaining between tribes and birth parents and prospective adoptive parents and their attorneys. This bargaining is certain to lead to more delays, as tribes resist the clear mandates of state courts and make the child the pawn. Indeed, we heard last year and this from the attorney for the Rost twins that such a provision would, in her view, have allowed her to construct a settlement of her case. And the reason given for the court-enforced visitation? The tribes do not trust the Rost family. We ask: what sort of environment is going to be established for those children, or any child, if the atmosphere is so poisoned by distrust that one of the parties insists on a court-ordered enforcement of visitation? Doesn't this sound hauntingly like the kind of child custody battles, the unfortunate and destructive tugs-of-war that take place between parents in divorce cases? Why import into federal law the litigious atmosphere of divorce child custody battles?

The fact is that if and when the possibility of court-enforced visitation is made possible, tribes – and at times, birth parents – will routinely insist on these arrangements.

It is important to clarify that these agreements, which change the very nature of adoption, are many steps beyond what we understand to be "open adoption." The various forms of "open adoption," which range from one time face-to-face meetings to agreements for ongoing communication through a third party, sometimes with exchange of identifying information, are quite different from the kind of ongoing access that would be codified in federal law under these bills.

Portraying our opposition to this "co-parenting" provision as somehow a reflection of views against "open adoption" – as has been done by some supporters of the legislation – is a distortion.

The bill would require notice to the tribe or tribes of all voluntary adoptions involving a child who may qualify for tribal membership. The fact that this is not presently a requirement reflects the intent of Congress when the law was originally enacted: voluntary adoptions were not ICWA's concern. After all, by what stretch of the imagination could an individual, say a pregnant woman who has no Native American blood quantum or other connection of any kind to any tribe, somehow come under the sway of a tribal court simply because the male who impregnated her had some small blood quantum of Native American heritage? Indeed, the very concept that a U.S. citizen, whether Native American or not, living on a reservation or not, could somehow be forced to submit her plan for her child's adoption to a tribal court, as if the tribe somehow "owned" her child, is repugnant to most U.S. citizens.

At the time ICWA passed, the focus was involuntary placements of Indian children – children about whom there was no debate as to whether they were Indian – who lived on reservations and who were involuntarily removed from their Indian families. The kind of case that ICWA was meant to address was recounted last year in the statement by Russell D. Mason, Sr., Chairman, Three Affiliated Tribes. On page 2 of his testimony, he talked about "...non-Indian social workers [who] arrived in a station wagon..." to take away an Indian grandmother's four grandchildren. Later, just before ICWA passed "...the non-Indian social workers took her newborn son right from the hospital."

The injustice of the case described by Mr. Mason, however often it may have happened, is what led the Congress to pass ICWA nearly 20 years ago. Now, the injustice has been flipped 180 degrees.

Now, in the name of tribal sovereignty, a woman who is non-Indian and who wants to voluntarily place her child for adoption would have to give the tribe or tribes notice – even if the father of the baby approved of her adoption plan. Where once, there may have been non-Indian courts ruling unjustly and involuntarily separating children from their parents, now it is Indian courts which wish to have the power to intervene in the lives of non-Indian women.

Make no mistake about it. When Sen. Inouye talks about an adoption of a child from China taking place according to the laws of China, that certainly makes sense because both of the biological parents of the child reside in China and are citizens of China. No such parallel can be drawn in many cases that we have seen in recent years. In particular, when the pregnant woman is not a member of a tribe and is in no way a "citizen" of that "government", how can it be argued that the United States should hand over her child's fate – and in many instances, her own peace of mind – to another "government."

Imagine what the response would be if someone were to suggest that fully separate and sovereign governments that border the United States, such as Canada or Mexico, were to claim that any child sired by one of their citizens could only be adopted if Canada or Mexico's courts agreed.

In last year's hearing before the Senate Committee on Indian Affairs, the scope of the problem was laid out in the testimony of Jack Trope, speaking on behalf of the Association on American Indian Affairs. On page 15 of his written statement, he put the Indian population at 2 million. Sen. Campbell said that 15 million claimed Indian ancestry. That means, taken together, that 17 million U.S. citizens are officially recognized or claim Indian ancestry. Many others may actually have Indian ancestry they are unaware of.

At least those 17 million need to be taken into consideration when voluntary adoptions are contemplated. We estimate that the total pool of potential people covered under the expanded sway of ICWA is 25 million, or about 10 percent of the population. At the very least, this means that notice will have to be given to the tribes in perhaps 10 percent of the voluntary, non-relative adoptions each year. That is at least 3,000 and may be 5,000 cases. And, to be safe, if there is any doubt about the ancestry of one of the birth parents, notice may be given when neither has any Indian blood quantum. A huge number of adoptions would lose their confidentiality through this transmission of information to the tribes. This is a sure prescription for massive, expensive growth of the BIA and tribal bureaucracies – growth that will entail new delays and new budget outlays.

A major issue was made in the hearing about the concerns raised by those organizations which describe themselves as "pro-life," and who objected to last year's proposal on the grounds that it would increase the likelihood that women would choose abortion. The thinking was that, faced with the choice of placing one's baby with the family (or attorney, or agency) of their choice or turning the case over to a tribal court, with the possibility that the child might be adopted by someone the mother does not approve, many women will choose to abort.

The argument made in the hearing this year, echoing statements made by Committee staff, was that "Indian women do not abort." So far as it goes, that comment may be pertinent, but it does not speak to the issue of what non-Indian women who are impregnated by Indian men will do. If one can estimate that at least some significant

portion of the pregnancies involve non-Indian women, and certainly the data suggest that this is so, then what of the abortion decisions of those women? Those in the pro-life organizations who question the impact of ICWA on abortion have a very valid point, in our view, especially as regards non-Indian women.

There are many other aspects of the legislation that one could comment on, but let us conclude with just one: the impact of the delays built into the proposed legislation. The legislation gives tribes a specific deadline to meet – a deadline that the witness for the Navaho Nation, Thomas E. Atcitty, favoring the legislation said, in this year's hearings, that they felt they would be unable to meet. He asked for 90 days, not 30. At a time when the Congress and the Administration is, in other discussions, talking about moving quickly to assure permanence to children, how is 90 days in foster care a step forward, even if all the other objections we and others have to this legislation were met?

Rather than pass this legislation, which we strongly oppose, we suggest that the Congress enact H.R. 1957, sponsored by Rep. Tiahrt and with Rep. Pryce as co-sponsor. We have not yet had the opportunity to review legislation which Rep. Pryce told the Joint Hearing she planned to introduce, so we cannot state whether we will endorse it or not.

Thank you for considering our views. The organizations and individuals whose names appear below join in opposing H.R. 1082 and S. 569.

Sincerely,

AARON BRITVAN, CO-CHAIR, ADOPTION COMMITTEE OF THE NEW YORK STATE BAR ASSOCIATION*
CHRISTIAN COALITION
HEAR MY VOICE, PROTECTING OUR NATION'S CHILDREN
INTERNATIONAL CONCERNS FOR CHILDREN
kidsHelp! FOUNDATION
NATIONAL COALITION TO END RACISM IN AMERICA'S CHILD CARE SYSTEM
NATIONAL COUNCIL FOR ADOPTION
RITA SIMON, AMERICAN UNIVERSITY*

* individual affiliations are for identification purposes only and do not necessarily represent endorsement by the organizations or institutions with which they are affiliated.

The Alan Guttmacher Institute
New York and Washington

A Not-for-Profit Corporation for Reproductive Health Research, Policy Analysis and Public Education

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Telephone 212 248-1111
Fax 212 248-1951
E-mail info@agi-usa.org

April 15, 1997

The Honorable Don Young
Committee on Resources
House of Representatives
Washington, DC 20515

Dear Chairman Young:

The Alan Guttmacher Institute (AGI) conducts periodic surveys of medical providers of abortion services nationwide and these surveys are acknowledged in the Statistical Abstracts of the United States as producing the most complete *count* of abortions performed throughout the country. These surveys complement the abortion data collection efforts of the Centers for Disease Control and Prevention (CDC) which depend primarily on reports from the 45 states that compile such information. These reports vary in their detail and completeness, but they often contain information—such as data on race and ethnicity—not routinely collected by AGI. We do have a file of such reports, which we made available to Ben Hirsch who came to us with questions similar to those posed in your letter.

We have read the proposed legislation carefully and cannot imagine how the proposed amendments to the Indian Child Welfare Act (ICWA), or the 1978 legislation, could in any way have an impact on the abortion rate of the Indian population. It would be extremely difficult and time-consuming to do the kind of statistical analysis which the Committee desires, and, in our judgment, such an analysis would not likely prove reliable in terms of the impact of the 1978 ICWA.

One factor is that mentioned above, namely, that abortion data by ethnicity are collected at the state level, with five states (Alaska, California, Iowa, New Hampshire and Oklahoma) not collecting abortion data at all. Another is that the data, when available, may be incomplete and insufficient to differentiate between Native Americans in the general population and those living on tribal lands. It should also be kept in mind that there may be

fluctuations in rates of abortion from year to year as there are for many other vital statistics.

Finally, the availability of abortion services in the years following the initial passage of the 1976 Hyde Amendment prohibiting the use of public funds to pay for abortion (but enjoined by the courts until 1980) would have fluctuated during the period and probably affected the abortion rate. Of course, to this day it serves to curtail the abortion rate of women who are dependent for their medical care on Indian health facilities and, to a lesser degree, of those Native American women in the general population who are otherwise eligible for Medicaid.

For all the reasons above, we regret that we are unable to meet your request as we do not feel that we could defend our estimates with any degree of confidence. Perhaps the CDC might come to a different conclusion.

Sincerely,

Jeannie I. Rosoff
President

AMERICAN
PSYCHOLOGICAL
ASSOCIATION

May 8, 1997

The Honorable John McCain
United States Senate
241 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator McCain:

On behalf of the 151,000 members and affiliates of the American Psychological Association (APA), I am writing to express our support for the legislation that you have introduced with your colleagues, Senators Campbell, Domenici, and Dorgan, to amend the Indian Child Welfare Act of 1978 (ICWA), S. 569.

As psychologists, we understand the need for children to grow and develop in loving homes and supportive communities. Among Indian people, the history of extended child-rearing responsibilities among many members of the community provides a natural means of safeguarding the well-being of children. Unfortunately, federal government policies prior to the enactment of ICWA in 1978 undermined traditional child rearing practices of Indian people. We applaud your legislation for reinforcing the original intent of the ICWA -- to protect Indian children and families and formalize a substantial role for Indian tribes in cases involving child custody proceedings -- while ensuring fairness and swift action in custody and adoption cases involving Indian children.

Prior to passage of the ICWA, Indian children were twelve to eighteen times more likely than non-Indian children to be placed in out-of-home care, with 85 percent of those children placed in non-Indian homes. Passage of the original ICWA in 1978 represented a milestone in the federal government's recognition that policies must be enacted to protect and preserve the Indian family and its culture. Since that time, many Indian tribes have developed child welfare programs that draw upon traditional practices and natural helping mechanisms. These systems will be enhanced by policies that strengthen tribal authority over Indian child welfare programs.

Many of the controversial cases surrounding the adoption of Indian children appear to have developed as a result of poor or non-existent enforcement of ICWA provisions. Provisions of your legislation, including criminal sanctions to deter fraudulent efforts to hide a child's Indian heritage, early notification to an Indian tribe by a party seeking to place an Indian child in an adoptive situation, and court certification that the attorney or adoption agency facilitating the adoption has informed the Indian child's birth parents of their placement options and other provisions of ICWA, offer substantial improvements to enforce the letter and spirit of ICWA.

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Washington, DC 20002-4242
(202) 336-5500
(202) 336-6123 TDD
Web: www.apa.org

The APA supports this legislation without revisions or weakening amendments. Should you require any additional information or assistance in planning hearings regarding this bill, please do not hesitate to contact me.

Sincerely,

Henry Tomes, Ph.D.
Executive Director,
Public Interest Directorate

cc: Senate Indian Affairs Committee

Bureau of CATHOLIC INDIAN MISSIONS

Board of Directors
John Cardinal O'Connor, President
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Executive Director and Treasurer
Monsignor Paul A. Lenz
(202) 331-8542

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

June 18, 1997

The Honorable Ben Nighthorse Campbell
Chairman, Senate Committee on Indian Affairs
U. S. Senate
Washington, DC 20510

Dear Senator Campbell:

I am writing to you and all the members of the Senate Committee on Indian Affairs because of the keen feelings drawn from experience in regard to the adoption of Indian children. I realize that few Americans have any idea of how the various Indian tribes fit into the organization of society in the United States. The fact that they are tribal has a decided influence on their life and attitude toward adoption. While many members of Congress seem to be of the opinion that a couple of any culture should have the right to adopt children of any other culture, the facts of life do not support such thought.

The letter written by Douglas Johnson, Legislative Director of the National Right to Life Committee, on August 1, 1996 is a case in point. Quoting the National Council for Adoption, he writes about S. 1962, the number of the bill introduced in the 104th Congress,

> "If S. 1962 becomes law, it would be the end of voluntary adoption 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 tribes may consider a child to be Indian for the purpose of the ICWA - each tribe having its own unpublished and ever-changing definition of membership and secret membership rolls."

The last reference in the quotation above about "unpublished and ever-changing definition of membership and secret membership rolls" is an exaggeration. Requirements of membership vary from tribe to tribe, but only tribes can determine who is a member of that tribe. Tribes are governments who have signed solemn treaties with another government, the United States of America. Pretending that tribes are make believe structures that change from day to day is part of the reason Indian tribes are not given the courtesy that they deserve. Secret membership rolls only adds to the insult that tribal governments have to endure and in this case in regard to their children who are cherished and loved by them.

We should look at the American Indian Tribes and the Indian Child Welfare Act Amendment. We call groups of Indians Tribes, but we could as easily and correctly speak of them as Nations, Pueblos, Communities and Governments. Whatever word we chose can easily fit our understanding of the unity that members of tribes sought. They had a unity which exceeds by far anything that we have in our communities today. From the Indian's viewpoint the term tribe is not a term with barbarous meaning. Because they did not have much in the way of material possessions, they looked to the strength of their unity as a great sustaining power for them. They were a small group of people surrounded by many hostile neighbors. We must remember that while we use the term "American Indian" for the more than five hundred tribes in the U.S.A. today, they did not look upon themselves and their neighbors as a unified organization of nations.

Today many persons who are not Indian tend to look down on the term "tribe". "Tribe" carries the suggestion of a few members, organized as a community to care for its own. That phrase "a community to care for its own" is a good phrase. Often, we do not think of a "tribe" in such terms, but fundamentally that is what they are. The fact that they were nations of several hundred did not detract from their purpose of unification. Before the founding of the United States of America as a nation, western European nations entered into treaties with Tribes of American Indians. After the United States was established, it signed treaties with Tribes because it recognized those Tribes as sovereign nations fully capable of signing terms of agreement with any other nation. Tribes interacted with all national communities on as international scale.

In fact in the Constitution of the United States of America in Article Six we read: "The Constitution, and the laws of the United States which are made in pursuance thereof; and **all the Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the land;** and every Judge of every State shall **be bound thereby**, any Thing in the Constitution or the Laws of the State to the Contrary notwithstanding." This nations recognizes that its treaties with the Tribes are **THE SUPREME LAW OF THE LAND.** This nation signed solemn treaties with the Tribes. We are bound to recognize what our Fathers have signed. We need to understand the nature of "Tribes" if we are to appreciate that to which we have agreed.

Because we are so large a nation, with almost 250,000,000 members, we do not realize what a tribe is. A tribe in contrast to the United States is a gathering of a few hundred people into a government that supported itself while surrounded by so many other governments. To put power on the very first level of support they had the extended family. Such a relationship could be counted in many ways, but that of the Sioux is a good example. It is a family structure in which all the brothers of the birth-father are called

FATHER, and all the sisters of the birth-mother are called MOTHER. There was no other addition to this title. A mother and all her sisters were called MOTHER, and a father and all his brothers were called FATHER. The term "cousin" was not used in the first generation. What is commonly called cousin in mode culture were referred to as brother and sister. So a child had many more brothers and sisters than is common in our families today.

Sisters of the father were call Aunt, and brothers of the mother were called Uncle. The child grew up with a group of mothers and a group of fathers. In fact because of this the child never faced the possibility of becoming an orphan. There were always Fathers and Mothers to care for him or her. That family pattern comes down to my time. I recall as a teacher when a child would seek to go on a shopping excursion with his mother and get an excuse to be absent from his teacher and then would go with an Aunt. Later when the teacher realized that he had gone with the person he or she would call Aunt, she would accuse the child of lying to her. He was not lying, he was being true to his culture. The fact that the teacher used a different scheme of naming relatives than the Indian boy did not seem to matter. But it gave the Indian boy the appearance of being untruthful. Grant that the child was intelligent enough to recognize that it would be simpler to refer to her as "Mother" rather than "Aunt" as the teacher called her, it really was not a case of lying.

For the Indian child the term "Mother" was the title of affection that he used to describe the sisters of his birth-mother. He used it honestly. But for the most part the teachers of the Indian child did not take enough time to learn the terms for his closest relatives. If she had heard of this culture, she would probably refer to it as some antiquated idea, but it was not antiquate. It was real. It right at the heart of his relationships.

There have been statements made that most Indian mothers would seek abortions if this bill S. 545 becomes the law of the land. Such talk is utter nonsense. It indicates how those who support such an idea do not understand S. 545. On the reservations the extended family still exist even though we are almost at the end of this millennium. Savage attacks on the naming of the closest members of a person's family is one of that last things we need. It is uncivilized for any of us to be so conceited that we think our way of naming family member is the ONLY way that exists. If we do not understand the diversity of cultures to appreciate the was of the Indian then it is better for us to be quiet until we do have some grasp of the tribal way of life.

If we would only pause and think about it, we would see that this naming of relatives is no different than that of the Jews in the time of Christ. Often from the various references to persons in scripture we recognize that somehow it does not work out. Of

course not, it we name relatives as we do in the late twentieth century when they named relatives as Jews did at the start of the Christian period. One has to respect the rights of cultures to name their relatives.

To give this respect to individual Indians, one has to have a long association with Tribes or else have a deep understanding of them that will allow you to realize that they have different values than you have and it is not your to force values on them.

To take a case from today's society, I know of an Indian mother who had her child taken from her by the state because she is an alcoholic person. She recognized that she would abandon the child, but she did not want to have the child removed from the Tribe or the extended family. She urged her cousin, as modern society names relatives, to apply for the care of her child which in the Indian was also her "cousin's" child. The needs of the tribe were fulfilled. They did not lose a child. The state probably did not realize it, but it used modern terminology and named one of the child's mothers as its mother in the language of today. Actually the birth-mother did not have a violent change in her relationship to the child. Cultures are so varied, yet when we do not see what they contain, they can totally escape our understanding.

When the Indian Child Welfare Act was signed into law in 1978, three our of four children who were place for adoption were adopted into non-Indian families. The parents were good, honest people. In their culture they were beyond any complaint. However, if they had adopted a full blood child or a child who had the appearance of an Indian, when this child got to the Junior High level of his or her education, he became curious about himself. What did it mean to be an Indian? Who am I? What were my true parents like? These questions became so disturbing that often his or her grades would begin to fall, he or she would begin to drink, sometimes there would be an absence from home for days at a time. The adopted child would be told not to worry about such thing that he or she was loved by the adoptive parents. But the child would continue to worry. That was natural.

Sometimes because of the drinking, crimes were committed and the adopted child. As these instances increased, the adoptive parents sometimes became impatient with the child. When the adoptive parents stayed faithful to the child, it was at a great price. Somehow they knew that more was expected of them than they had provided. But they were confused, since they had so little to give the child in way of information about Indian ancestry. In the sense of the Greeks, it was a true tragedy. Neither was to blame. The Indian child wanted to know. The adoptive parents had no information to give.

As a priest I have advised non-Indian prospective parents to

forgo their desire to adopt Indian children because I could see this very problem lying ahead as the child grew older. It is not fair to the child to place him or her in a position in which there can be no answer to the questions the child would ask as it grew older. The child would be haunted by wanting to know. The prospective parents through no fault of their would have no answers. Tragedy awaited all family members

Tragedy because culture has the color of water. Whatever it reflects is its color at that moment. For each of us as we are born into a culture, that culture from the start of our lives gives meaning to all we do. We do not realize that there other cultures different from ours. We do not realize that other people from other cultures have different approaches to the basic characteristics of life. We are distinguished by our cultures, and often we tend to believe that our culture is right and all the other people are wrong. We must work hard and study deeply to come to an understanding of how deeply we individually are affected by the culture of our lives. As a matter of fact, Anthropology which is the study of cultures, began as a formal course of study only a little more than 150 years ago. It is younger than we are as a nation.

We speak of savages and barbarians, not because we know people to be such creatures, but because we know that somehow they act differently than we do. They have a different approach to life. They have a scheme of life that does not fit into our way of living. Sometimes we can recognize that people of other cultures have some basic sense of the same values that we have. Allow me to recall a story that has been handed down for generations of a pioneering family and its encounter with Indians. One evening these settlers notice a small group of Indians approach. They were terrified, but decided they would be friendly. So with gestures since neither spoke the others tongue, they had they sit down and fed them. When they finished eating, the Indians smiled and left. The family was relieved to have come so close to the Indians and to still be alive. Several days later, however, they saw the Indians return. This time they brought two deer that they had killed. These they left with the settler family. They were grateful and they showed it. The white settlers did not know that generosity was the prime characteristic of this tribe, but they knew that the deer were in exchange for the meal they had received.

The non-Indian adoptive parents are much like the settlers in this true account. They had no idea of how a tribe might list the possible characteristics of its life. That "generosity" should be at the very top of the list would amaze them, but it shows how close we are to other cultures when like them we do not list "generosity" as the top quality of our lives. This is something that most adoptive parents would not understand about the American Indian. They could not pass this information on to their "Indian Child.

Those who somehow see the passage of this Act as a certainty of abortions by Indian women do not have the knowledge that we need to associate with Indian people. As culture is the color of water, they assume that all cultures are the same. They should read the psychologist Eric Ericksons' account of life among the Oglala Sioux of Pine Ridge, S.D. He speaks of the child being lovingly carried until birth by his mother who recognizes in the child that another member of the tribe is to be born. She awaits his coming with love. (How tragic that so many mothers can not have that experience, but have to turn to abortion to be rid of the child.) How tragic that many who do not understand the cultures of Indians, are not able to distinguish the sentiments of expectant Indian mothers from those of the dominant culture of this country.

There is an Indian term that is translated into English as "Precious Child" and is used frequently in regard to children. Children are precious. When we look at the family structure of the Indian and see that whole generation of cousins became for them brothers and sisters and the whole evil that they see in abortion, we can only recognize the high level of love they bestowed on children. Modern America with its notions of abortion do not fit into the Indians view of life. American women may reluctantly accept abortion. Indian women have no place for it in their scheme of life. Even the current law fits into the Indian's view by allowing one, whom we call cousin but for them is a brother or sister and to the child a mother and father, to adopt that child and simply allow a transfer of care to that one whom in the Indian way is already mother.

To say as we quote above, "no prudent agency or attorney is going to expose themselves to the risk of criminal prosecution under the bill" is to use sledge hammers to strike at mosquitos. This bill sets time limits to the right of tribes to assert their rights in instances of adoption. Mothers who have moved away from tribal values are not the subject of tribal care in this bill. This bill is for the benefit of Indians who are proud of their values and wish to cling to them even when for one reason or another they must place a child for adoption.

I join with all Indian Tribes and agencies who support them in recommending the passage of this Bill S. 569 for the protection of American Indian children. Thank you for this consideration.

Sincerely yours,

Ted Zuern, S.J.
Legislative Director

UNITED SOUTH AND EASTERN TRIBES, INC.
711 Stewarts Ferry Pike • Suite 100 • Nashville, TN 37214
Telephone: (615) 872-7900 • Fax: (615) 872-7417

November 21, 1997

The Honorable Ben Nighthorse Campbell, Chairman
Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Campbell:

The United South and Eastern Tribes, Inc. (USET) is an inter-tribal organization that represents Governments of twenty-three Tribes located in the states of Texas, Louisiana, Mississippi, Alabama, Florida, North Carolina, South Carolina, New York, Connecticut, Rhode Island, Massachusetts and Maine.

The Board of Directors, at its Annual Board of Directors Meeting held in Philadelphia, Mississippi on October 30, 1997, passed Resolution USET 98:02. This resolution titled "Support for ICWA Amendments: H.R. 1082 and S. 569" is attached for reference.

The USET Board of Directors endorses the tribally initiated amendments to the ICWA as proposed in H.R. 1082 and S.569 and calls upon the 105th Congress to enact this legislation. The USET Board of Directors also calls upon Congress to review the "existing Indian family" interpretation of ICWA and consider future legislation that would apply ICWA to all "Indian children" as that term is defined in ICWA. Should you have any questions feel free to contact my office.

Sincerely,

James T. Martin
Executive Director

JTM/ar
Enclosures

cc: Secretary Bruce Babbit, DOI
Honorable Don Young, Chairman of Committee on Resources

"Because there is strength in Unity"

UNITED SOUTH AND EASTERN TRIBES, INC.

Resolution No. USET 98:02

SUPPORT FOR ICWA AMENDMENTS: H.R. 1082 AND S. 569

WHEREAS, the United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-three (23) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors is comprised of delegates from the member tribes leadership; and

WHEREAS, the USET Board of Directors is dedicated and committed to the needs of its tribes and members to the goal of preserving the sovereignty, inherent rights, integrity, and stability of our Indian children and families; and

WHEREAS, the *Indian Child Welfare Act of 1978* [ICWA] was designed in consultation with Tribes and was enacted to support Tribes in the protection of their children from unjust removal and to strengthen their families; and

WHEREAS, the 104th Congress, the House of Representatives, in Title III of the *Adoption and Stability Act of 1996*, passed amendments to ICWA which would have seriously limited the ability of Indian Tribes to participate in foster care and adoption decision-making affecting their children; and

WHEREAS, various members of both the House and Senate continue to advocate for either complete repeal of the ICWA or other legislation that would seriously limit Tribal involvement in foster care and adoption proceedings affecting their children; and

WHEREAS, the USET Board of Directors at their Semi-Annual Meeting in Bangor, ME on June 21, 1996 considered and endorsed alternative amendments to ICWA [see Resolution 96:34] which were the result of a one-year process of discussion between Tribal representatives, the National Congress of American Indians and the American Academy of Adoption Attorneys; and

WHEREAS, those "amendments" have been introduced in the 105th Congress by Congressmen Young and Miller as H.R. 1082 and Senators McCain, Campbell, Domenici and Dorgan as S. 569; and

WHEREAS, H.R. 1082 and S.569, drafted by Tribes and Indian organizations in consultation with representatives of leading adoption attorney organizations, include the following elements:

- Requires notice to Indian Tribes and extended family members, as defined by the respective Tribe receiving notice, in all voluntary child custody proceedings.
- Provides for criminal sanctions for anyone who assists a person to conceal their Indian ancestry for the purpose of avoiding the application of the ICWA.
- Authorizes state courts to enter orders allowing for continuing contact between Tribes and their children who were adopted.
- Provides for certain provisions placing time limits on the Tribal and extended family right to intervene in voluntary child custody proceedings and the right of unwed fathers to acknowledge paternity; and
- Mandates that the judge in a termination of parental rights or adoption proceeding assure that the parents of an Indian child have been informed of their ICWA rights; and

WHEREAS, Courts in several states have interpreted the ICWA as not applying to Indian children who have not been in the custody of an "existing Indian family"; and

WHEREAS, this State Court concept of "existing Indian family" removes many Indian children from the protection of ICWA and from any relationship with their Tribes and for this reason is universally opposed by Tribes; therefore, be it

RESOLVED, the USET Board of Directors again endorses the above mentioned tribally initiated amendments to the ICWA as proposed in H.R. 1082 and S. 569 and calls upon the 105th Congress to enact this legislation; be it further

RESOLVED, that the USET Board of Directors call upon the Congress to review the "existing Indian family" interpretation of ICWA and consider future legislation that would apply ICWA to all "Indian children" as that term is defined in ICWA.

CERTIFICATION

This resolution was duly approved at the USET Annual Meeting, at which a quorum was present in Philadelphia, Mississippi on Thursday, October 30, 1997.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary
United South and Eastern Tribes, Inc.

UNITED SOUTH AND EASTERN TRIBES, INC.
711Stewarts Ferry Pike • Suite 100 • Nashville, TN 37214
Telephone: (615) 872-7900 • Fax: (615) 872-7417

UNITED SOUTH AND EASTERN TRIBES, INC.

Resolution No. 05/95-11LA

OPPOSITION TO INDIAN CHILD WELFARE ACT AMENDMENTS

WHEREAS, the United South and Eastern Tribes, Incorporated (USET), is an inter-tribal organization comprised of twenty-one (21) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors is comprised of delegates from the member tribes leadership; and

WHEREAS, the USET Board of Directors is firmly committed to the goal of protecting the sovereignty of Indian tribes and safeguarding the status and integrity of tribal custom and culture by assuring that the integrity and stability of Indian families is not threatened by legislation designed to erode, manipulate or eliminate the stability of Indian families; and

WHEREAS, the USET Board of Directors is opposed to changes in the Indian Child Welfare Act of 1978, by the proposed changes as outlined in H.R. 1448 which does not reflect the wishes of Indian people, but does instead reflect the wishes and desires of outside groups and entities who are attempting to control Indian people and families; and

WHEREAS, the USET Board of Directors feels that the proposed amendments to the Indian Child Welfare Act of 1978, as outlined in H.R. 1448 would be detrimental to the sovereignty and sanctity of Indian people and their inherent right to protect and strengthen the integrity of Indian families,

NOW, THEREFORE BE IT RESOLVED that the USET Board of Directors opposes any changes to the Indian Child Welfare Act of 1978 unless such changes are proposed and submitted by the majority of federally recognized Indian tribes.

CERTIFICATION

This resolution was duly passed at the Board of Directors meeting at which a quorum was present, in Lafayette, LA, June 1, 1995.

Keller George, President
United South and Eastern Tribes, Inc.

Philip Tarbell, Secretary
United South and Eastern Tribes, Inc.

THE NAVAJO NATION

ALBERT A. HALE
PRESIDENT

THOMAS E. ATCITTY
VICE PRESIDENT

June 19, 1997

Honorable Ben Nighthorse Campbell, Chairman
Senate Indian Affairs Committee
U.S. Senate
Washington, D.C. 20510

Dear Chairman Campbell,

On behalf of the Navajo people, I am writing to express our strong opinions regarding the Indian Child Welfare Act amendments of 1997. The ICWA plays a very important role in the life of the Navajo Nation's most precious resource, our Navajo children. We wish to emphasize three areas to ensure the ICWA is implemented correctly by states and that the child protection systems within Indian nations are equipped to protect Indian children. The three areas not addressed in Senate Bill 569: (1) the clarification of voluntary placements and termination, and the time lines within which a tribe intervenes in state proceedings; (2) the inclusion of Title IV-E funding and/or language; and (3) the judicially-created exception in state courts. First, the Navajo Nation supports S. 569, sponsored by Senator John McCain, on the condition of clarification of two major items: voluntary placements and voluntary termination and the time lines within which a tribe may intervene in a state court proceeding:

> S. 569 proposes a new Section 1913 (c) and (d) that requires the Indian child's tribe must receive notice of the proceeding, and that the notice must contain information to allow the Indian child's tribe to verify application of the ICWA. While the proposal adds language to make frauduient misrepresentation a crime, there is no requirement that the information contained in the Section 1913 (d) notice be compiled in good faith. It is of critical importance that a good faith investigation be made into the information required by the Section 1913 (d) and forwarded to the tribe.
>
> The proposed Section 1913 (e) set forth timeliness within which a tribe may intervene in a state proceeding is not clear. The 30-day time line present difficulties in determining enrollment eligibility of Indian children due to the time it takes to find the determination of ICWA applicability, finding local counsel, case staffing, and contract approvals. Clarifying language directing that the notice of intent to intervene only requires a simple statement which the tribe's ICWA program is needed to prevent ICWA from being deprived of any meaning.
>
> The Navajo Nation is also concerned about the term "certification" as used in the addendum may be used to impose an artificial barrier in some jurisdictions. It is possible that some states may act officiously by requiring that a particular state form be used to meet state evidentiary standards. While the proposed amendment can be read to mean that this certification is a tribal certification, language clarifying that it is a tribal certification which is required, without the need for further evidentiary authentication could greatly minimize the opportunity for later misunderstandings.

Whatever changes may be proposed to the Indian Child Welfare Act, it is important to remember that the ICWA was not only enacted to preserve American Indian Tribes' most precious resources-its members, but also to prevent the type of alienation experienced by Indian children who were adopted by non-Indian families before ICWA was adopted. During infancy and in early childhood, an Indian child may adapt to and be accepted by a non-Indian family. However, later many of these children face difficulties in self-identification and adaption. What may have started out as a "good" intention becomes detrimental to the child. While much has been said about children and parents, both natural and adoptive, it is extremely critical to be mindful of the long-term effects of depriving Indian children of their heritage.

The Navajo Nation, subject to the above issues, believe that the proposed amendments will help clarify the ICWA.

Second, the Navajo Nation is concerned with the current provisions of Title IV-E of the Social Security Act, Foster Care and Assistance It is an open-ended entitlement program providing federal funds to states for foster care and adoption assistance programs since 1980. However, it has only been available to states through matching funds to support foster care and adoption services . While this funding was intended to serve all eligible children in the United States, the legislation lacked a provision to cover a class of children (Indian children) living in tribal areas. The statute overlooked tribal governments and children placed by tribal courts in receiving the entitlement. This issue has negatively impacted the ability of Indian children to secure a sense of permanency after being removed from their homes, especially since adoption programs are under funded.

To receive Title IV-E money, a tribe must also enter into agreements with states, with a state "passing through these funds" to the tribe. Currently, only 50 of the federally recognized tribes receive any Title IV-E funding which does not include administrative, training or data systems funding. Therefore, the Navajo Nation recommends direct funding rather than tribes entering into agreements with states.

Presently, many unsubsidized care homes are established within Indian Nations to avoid leaving children in harmful situations. These unsubsidized homes were indicative of the good will of a family in the community who will commit their personal resources, time and home to foster care, legal guardianship, or preadoptive placement for a child. A vast majority of these families find that this is stressful and sometimes unworkable after a period of time, especially when considering the numbers of Indian families on tribal lands who live in or close to poverty. With direct funding, Indian tribes would be able to keep these families closer together rather than placing them in off reservation, non-Indian homes. Also, the numbers of Indian foster and adoptive homes would rise due to basic maintenance payments and support services that Title IV-E would guarantee providers. This would essentially begin to establish permanency for Indian children.

The Navajo Nation requests your direct assistance on this important issue and the opportunity to correct this glaring inequity. We recommend that if direct Title IV-E funding is not possible to the Navajo Nation, then the Title IV-E language be included in this legislation, requiring the following: (1) a provision requiring states to serve tribes rather than a tribal-state agreement; and (2) applying penalties as in P.L. 103-382, Multiethnic Placement Act, should discrimination occur.

Finally, the Navajo Nation is also concerned about recent developments in state courts where judges have ruled out that ICWA does not apply because the Indian child had not lived in an "Indian environment" or the Indian parents had not maintained "significant ties" to their Indian nation. In essence, these state courts are ruling on whether the Indian child and Indian parents were members of an Indian nation. Federal law and United States Supreme Court decisions has consistently recognized the fundamental right of Indian nations to determine membership. It is inappropriate for state courts to make determinations on whether ICWA applies to an Indian child by inquiring into whether the Indian child or Indian parents are really "Indians". ICWA does not authorize this type of inquiry which should lie with the Indian tribes. The Navajo Nation recommends additional amendments be incorporated to halt this practice of state courts. Otherwise, ICWA will be undermined and implemented incorrectly by states.

The Navajo Nation supports S. 569 with our recommendations. If you have additional questions or need further assistance, please contact Sharon Clahchischilly, Legislative Associate, at the Navajo Nation Washington office at (202) 775-0393.

Sincerely,

Ralph Bennett, Jr.
Navajo Nation Council Delegate
Chapter/s: Red Lake and Sawmill

xc: files

THE NAVAJO NATION

1997 JUN 30 AM 8:21

ALBERT A. HALE
PRESIDENT

THOMAS E. ATCITTY
VICE PRESIDENT

June 19, 1997

Honorable Ben Nighthorse Campbell, Chairman
Senate Indian Affairs Committee
U.S. Senate
Washington, D.C. 20510

Dear Chairman Campbell,

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Whatever changes may be proposed to the Indian Child Welfare Act, it is important to remember that the ICWA was not only enacted to preserve American Indian Tribes' most precious resources-its members, but also to prevent the type of alienation experienced by Indian children who were adopted by non-Indian families before ICWA was adopted. During infancy and in early childhood, an Indian child may adapt to and be accepted by a non-Indian family. However, later many of these children face difficulties in self-identification and adaption. What may have started out as a "good" intention becomes detrimental to the child. While much has been said about children and parents, both natural and adoptive, it is extremely critical to be mindful of the long-term effects of depriving Indian children of their heritage.

The Navajo Nation, subject to the above issues, believe that the proposed amendments will help clarify the ICWA.

Second, the Navajo Nation is concerned with the current provisions of Title IV-E of the Social Security Act, Foster Care and Assistance It is an open-ended entitlement program providing federal funds to states for foster care and adoption assistance programs since 1980. However, it has only been available to states through matching funds to support foster care and adoption services . While this funding was intended to serve all eligible children in the United States, the legislation lacked a provision to cover a class of children (Indian children) living in tribal areas. The statute overlooked tribal governments and children placed by tribal courts in receiving the entitlement. This issue has negatively impacted the ability of Indian children to secure a sense of permanency after being removed from their homes, especially since adoption programs are under funded.

To receive Title IV-E money, a tribe must also enter into agreements with states, with a state "passing through these funds" to the tribe. Currently, only 50 of the federally recognized tribes receive any Title IV-E funding which does not include administrative, training or data systems funding. Therefore, the Navajo Nation recommends direct funding rather than tribes entering into agreements with states.

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The Navajo Nation requests your direct assistance on this important issue and the opportunity to correct this glaring inequity. We recommend that if direct Title IV-E funding is not possible to the Navajo Nation, then the Title IV-E language be included in this legislation, requiring the following: (1) a provision requiring states to serve tribes rather than a tribal-state agreement; and (2) applying penalties as in P.L. 103-382, Multiethnic Placement Act, should discrimination occur.

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The Navajo Nation supports S. 569 with our recommendations. If you have additional questions or need further assistance, please contact Sharon Clahchischilly, Legislative Associate, at the Navajo Nation Washington office at (202) 775-0393.

Sincerely,

Genevieve Jackson
Navajo Nation Council Delegate
Chapter/s: Shiprock

xc: files

THE NAVAJO NATION

1997 JUN 30 AM 8:21

ALBERT A. HALE
PRESIDENT

THOMAS E. ATCITTY
VICE PRESIDENT

June 19, 1997

Honorable Ben Nighthorse Campbell, Chairman
Senate Indian Affairs Committee
U.S. Senate
Washington, D.C. 20510

Dear Chairman Campbell,

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The Navajo Nation, subject to the above issues, believe that the proposed amendments will help clarify the ICWA.

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Sincerely,

Freddie Howard
Navajo Nation Council Delegate
Chapter/s: Birdsprings and Tolani Lake

xc: files

THE NAVAJO NATION

ALBERT A. HALE
PRESIDENT

THOMAS E. ATCITTY
VICE PRESIDENT

June 19, 1997

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Senate Indian Affairs Committee
U.S. Senate
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Sincerely,

Lewis H. Begay

Lewis H. Begay
Navajo Nation Council Delegate
Chapter/s: Chilchiltah

xc: files

THE NAVAJO NATION

1997 JUN 30 AM 8:21

ALBERT A. HALE
PRESIDENT

June 19, 1997

THOMAS E. ATCITTY
VICE PRESIDENT

Honorable Ben Nighthorse Campbell, Chairman
Senate Indian Affairs Committee
U.S. Senate
Washington, D.C. 20510

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Sincerely,

Albert Lee
Navajo Nation Council Delegate
Chapter/s: Two Grey Hillls

xc: files

THE
NAVAJO
NATION 1997 JUN 30 AM 8 21

ALBERT A. HALE
PRESIDENT

THOMAS E. ATCITTY
VICE PRESIDENT

June 19, 1997

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U.S. Senate
Washington, D.C. 20510

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Sincerely,

Charlie C. Billy

Charlie Billy
Navajo Nation Council Delegate
Chapter/s: Chilchinbeto and Kayenta

xc: files

THE NAVAJO NATION

ALBERT A. HALE
PRESIDENT

June 19, 1997

THOMAS E. ATCITTY
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The Navajo Nation supports S. 569 with our recommendations. If you have additional questions or need further assistance, please contact Sharon Clahchischilly, Legislative Associate, at the Navajo Nation Washington office at (202) 775-0393.

Sincerely,

Wilford Lane
Navajo Nation Council Delegate
Chapter/s: LeChee

xc: files

THE NAVAJO NATION

1997 JUN 30 AM 8 21

ALBERT A. HALE
PRESIDENT

June 19, 1997

THOMAS E. ATCITTY
VICE PRESIDENT

Honorable Ben Nighthorse Campbell, Chairman
Senate Indian Affairs Committee
U.S. Senate
Washington, D.C. 20510

Dear Chairman Campbell,

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Sincerely,

Alfred L. Yazzie
Navajo Nation Council Delegate
Chapter/s: Rough Rock

xc: files

THE
NAVAJO
NATION

ALBERT A. HALE
PRESIDENT

June 19, 1997

THOMAS E. ATCITTY
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Senate Indian Affairs Committee
U.S. Senate
Washington, D.C. 20510

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Sincerely,

James Bilagody
Navajo Nation Council Delegate
Chapter/s: Coalmine Mesa and Tuba City

xc: files

THE NAVAJO NATION

ALBERT A. HALE
PRESIDENT

June 19, 1997

THOMAS E. ATCITTY
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Sincerely,

David Laughter
Navajo Nation Council Delegate
Chapter/s: Inscription House and Navajo Mountain

xc: files

THE NAVAJO NATION

1997 JUL 24 PM 3:36

ALBERT A. HALE
PRESIDENT

June 19, 1997

THOMAS E. ATCITTY
VICE PRESIDENT

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U.S. Senate
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Sincerely,

Leslie Dele
Navajo Nation Council Delegate
Chapter/s: Tonalea

xc: files

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To receive Title IV-E money, a tribe must also enter into agreements with states, with a state "passing through these funds" to the tribe. Currently, only 50 of the federally recognized tribes receive any Title IV-E funding which does not include administrative, training or data systems funding. Therefore, the Navajo Nation recommends direct funding rather than tribes entering into agreements with states.

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The Navajo Nation requests your direct assistance on this important issue and the opportunity to correct this glaring inequity. We recommend that if direct Title IV-E funding is not possible to the Navajo Nation, then the Title IV-E language be included in this legislation, requiring the following: (1) a provision requiring states to serve tribes rather than a tribal-state agreement; and (2) applying penalties as in P.L. 103-382, Multiethnic Placement Act, should discrimination occur.

Finally, the Navajo Nation is also concerned about recent developments in state courts where judges have ruled out that ICWA does not apply because the Indian child had not lived in an "Indian environment" or the Indian parents had not maintained "significant ties" to their Indian nation. In essence, these state courts are ruling on whether the Indian child and Indian parents were members of an Indian nation. Federal law and United States Supreme Court decisions has consistently recognized the fundamental right of Indian nations to determine membership. It is inappropriate for state courts to make determinations on whether ICWA applies to an Indian child by inquiring into whether the Indian child or Indian parents are really "Indians" ICWA does not authorize this type of inquiry which should lie with the Indian tribes. The Navajo Nation recommends additional amendments be incorporated to halt this practice of state courts. Otherwise, ICWA will be undermined and implemented incorrectly by states.

The Navajo Nation supports S. 569 with our recommendations. If you have additional questions or need further assistance, please contact Sharon Clahchischilly, Legislative Associate, at the Navajo Nation Washington office at (202) 775-0393.

Sincerely,

Albert Tom
Navajo Nation Council Delegate
Chapter/s: Klagetoh and Wide Ruins

xc: files

THE NAVAJO NATION

ALBERT A. HALE
PRESIDENT

June 19, 1997

THOMAS E. ATCITTY
VICE PRESIDENT

Honorable Ben Nighthorse Campbell, Chairman
Senate Indian Affairs Committee
U.S. Senate
Washington, D.C. 20510

Dear Chairman Campbell,

On behalf of the Navajo people, I am writing to express our strong opinions regarding the Indian Child Welfare Act amendments of 1997. The ICWA plays a very important role in the life of the Navajo Nation's most precious resource, our Navajo children. We wish to emphasize three areas to ensure the ICWA is implemented correctly by states and that the child protection systems within Indian nations are equipped to protect Indian children. The three areas not addressed in Senate Bill 569: (1) the clarification of voluntary placements and termination, and the time lines within which a tribe intervenes in state proceedings; (2) the inclusion of Title IV-E funding and/or language; and (3) the judicially-created exception in state courts. First, the Navajo Nation supports S. 569, sponsored by Senator John McCain, on the condition of clarification of two major items: voluntary placements and voluntary termination and the time lines within which a tribe may intervene in a state court proceeding:

> S. 569 proposes a new Section 1913 (c) and (d) that requires the Indian child's tribe must receive notice of the proceeding, and that the notice must contain information to allow the Indian child's tribe to verify application of the ICWA. While the proposal adds language to make fraudulent misrepresentation a crime, there is no requirement that the information contained in the Section 1913 (d) notice be compiled in good faith. It is of critical importance that a good faith investigation be made into the information required by the Section 1913 (d) and forwarded to the tribe.
>
> The proposed Section 1913 (e) set forth timeliness within which a tribe may intervene in a state proceeding is not clear. The 30-day time line present difficulties in determining enrollment eligibility of Indian children due to the time it takes to find the determination of ICWA applicability, finding local counsel, case staffing, and contract approvals. Clarifying language directing that the notice of intent to intervene only requires a simple statement which the tribe's ICWA program is needed to prevent ICWA from being deprived of any meaning.
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> The Navajo Nation is also concerned about the term "certification" as used in the addendum may be used to impose an artificial barrier in some jurisdictions. It is possible that some states may act officiously by requiring that a particular state form be used to meet state evidentiary standards. While the proposed amendment can be read to mean that this certification is a tribal certification, language clarifying that it is a tribal certification which is required, without the need for further evidentiary authentication could greatly minimize the opportunity for later misunderstandings.

Whatever changes may be proposed to the Indian Child Welfare Act, it is important to remember that the ICWA was not only enacted to preserve American Indian Tribes' most precious resources-its members, but also to prevent the type of alienation experienced by Indian children who were adopted by non-Indian families before ICWA was adopted. During infancy and in early childhood, an Indian child may adapt to and be accepted by a non-Indian family. However, later many of these children face difficulties in self-identification and adaption. What may have started out as a "good" intention becomes detrimental to the child. While much has been said about children and parents, both natural and adoptive, it is extremely critical to be mindful of the long-term effects of depriving Indian children of their heritage.

The Navajo Nation, subject to the above issues, believe that the proposed amendments will help clarify the ICWA.

Second, the Navajo Nation is concerned with the current provisions of Title IV-E of the Social Security Act, Foster Care and Assistance It is an open-ended entitlement program providing federal funds to states for foster care and adoption assistance programs since 1980. However, it has only been available to states through matching funds to support foster care and adoption services . While this funding was intended to serve all eligible children in the United States, the legislation lacked a provision to cover a class of children (Indian children) living in tribal areas. The statute overlooked tribal governments and children placed by tribal courts in receiving the entitlement. This issue has negatively impacted the ability of Indian children to secure a sense of permanency after being removed from their homes, especially since adoption programs are under funded.

To receive Title IV-E money, a tribe must also enter into agreements with states, with a state "passing through these funds" to the tribe. Currently, only 50 of the federally recognized tribes receive any Title IV-E funding which does not include administrative, training or data systems funding. Therefore, the Navajo Nation recommends direct funding rather than tribes entering into agreements with states.

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The Navajo Nation requests your direct assistance on this important issue and the opportunity to correct this glaring inequity. We recommend that if direct Title IV-E funding is not possible to the Navajo Nation, then the Title IV-E language be included in this legislation, requiring the following: (1) a provision requiring states to serve tribes rather than a tribal-state agreement; and (2) applying penalties as in P.L. 103-382, Multiethnic Placement Act, should discrimination occur.

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Sincerely,

Rex Morris, Jr.
Navajo Nation Council Delegate
Chapter/s: Coyote Canyon and Tohatchi

xc: files

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Albert E. Ross, Jr.
Navajo Nation Council Delegate
Chapter/s: St. Michaels

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