



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PSP-09-058

TITLE: Initiative to Amend the Indian Child Welfare Act to Make Judicially Enforceable, in Federal Court, the “Placement Preferences” Mandated by Sections 1915 and 1916 of the ICWA

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, former South Dakota United States Senator James Abourezk, the Principal Congressional author of the Indian Child Welfare Act of 1978 (P.L. 95-608) and the South Dakota based Lakota People's Law Office propose a congressional Amendment to make the “placement preference” of ICWA enforceable, by litigation, brought by immediate family, Indian grandparents, and other Indian relatives who are overlooked or denied placement of their relative children with them in placement decisions made by the State Social services; and

WHEREAS, P.L. 95-608, the Indian Child Welfare Act (ICWA), was passed thirty years ago (1978) and mandates that when Indian children are removed from their parents or Indian custodian for legitimate reasons by State Social Services and State Courts, that the child's immediate family, Indian extended family, and tribal members are to be given “preference” in the placement of these children; and

WHEREAS, a survey conducted by the Lakota People's Law Project during the summer of 2009 of 40 tribal ICWA office nationally, reveals that over 50% of those office surveyed identified that ignoring the “placement preferences” is the main ICWA violation when asked to rank the top three (3) ICWA violations in their State; and

WHEREAS, Indian tribes and Indian families must raise their own children and repair the untold damage to the children, to renew the traditional value systems, customary and kinship rules of Indian people; and

WHEREAS, an Amendment to P.L. 95-608, the Indian Child Welfare Act proposed by Former Senator James Abourezk that reflects and enforces the original intent of ICWA is needed; and

WHEREAS, NCAI President Joe Garcia has spoken publicly about the special place of honor Indian children hold in Indian cultures and of a vision tribal leaders have expressed to create a safe, healthy Indian Country for our children; and

WHEREAS, President Garcia discussed the community’s sacred obligation to instill in children the traditional knowledge of past generations so their innocence and laughter may develop into wisdom as they become our leaders of the future; and

WHEREAS, to realize this vision, Indian children must remain within their tribal cultures.

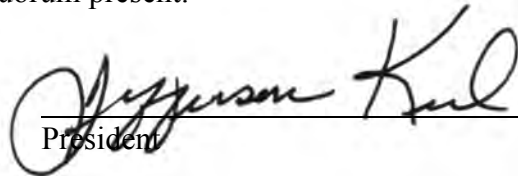
NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby ask and urge the United States Congress to enact the following Amendment to P.L. 95-608, the Indian Child Welfare Act, to read:


“Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law; any Parent or Indian custodian from whose custody such a child was removed; **any individual person to whom custody of such an Indian child was withheld who falls within the definition of an “Indian person” who is entitled to “preferred placement” of such an Indian child**; and the Indian child’s tribe, may petition any court of competent jurisdiction **including any federal court having lawful venue over any such action** to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, ~~and~~ 1913, 1915 and 1916 of this title. **This right of civil action shall be available retroactively to any Indian person whose “right to preferential placement” of such an Indian child provided in this Act was not adequately recognized and given effect by any State Court or State Agency at any time since 1978;**” and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2009 Annual Session of the National Congress of American Indians, held at the Palm Springs Convention Center in Palm Springs, California on October 11-16, 2009, with a quorum present.


President

ATTEST:

Recording Secretary