



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PHX-16-057

TITLE: Stopping Indian Child Welfare Act Non-Compliance and Supporting Tribal Advocacy to Address Non-Compliance

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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, the Indian Child Welfare Act (ICWA) was enacted in 1978 to stop the flow of Indian children being removed from their families and communities and placed in non-Indian foster care and adoptive homes (25% - 35% of all Indian children); and

WHEREAS, the consequences of these abusive practices by private and public agencies and state courts led to generations of Indian children losing contact with their families, siblings, communities, and culture, and untold trauma to the tribal families and children affected; and

WHEREAS, today we still see Indian children removed and placed into state foster care at rates 2-12 times higher than their white counterparts and increasing examples of deliberate non-compliance with ICWA, especially among private adoption interests¹; and

WHEREAS, the basis for Congress passing ICWA is based in the sovereign governmental status of Tribal Nations and the unique trust relationship the United States of America has for tribes and Indian people and not on a racial classification or other non-political status; and

WHEREAS, the trust responsibility allows the United States to enact legislation, like ICWA, that protects Indian children, families, and tribes and regulates the child welfare practices of states when Indian children and families are involved; and

1. (*Summers, A. (2015). Technical assistance bulletin: Disproportionality rates for children of color in foster care. National Council of Juvenile and Family Court Judges: Reno, NV.*)

WHEREAS, Congress and the U.S. Supreme Court have expressed the primacy of tribal jurisdiction in child welfare matters and stated that state courts recognize tribal jurisdiction as presumptive; and

WHEREAS, because public and private agencies, and state courts are not in substantial compliance with ICWA, Tribal Nations experience barriers to exercising their jurisdiction in child welfare matters and are being forced to expend large amounts of tribal funds on addressing non-compliance and frivolous lawsuits attacking ICWA and tribal sovereign authority; and

WHEREAS, tribes play a critical role in educating public and private agencies and state courts on proper implementation of ICWA and assisting birth parents and children's attorneys to ensure their ICWA rights are protected; and

WHEREAS, a 2005 General Accountability Office study of ICWA implementation revealed how dependent states are upon tribes to assist them in implementing ICWA properly despite tribes being severely underfunded in this area; and

WHEREAS, on June 14, 2016 the Bureau of Indian Affairs promulgated comprehensive, legally-binding regulations clarifying the requirements of ICWA for state courts; and

WHEREAS, these regulations provide valuable clarification for both states and tribes on the steps to properly implement ICWA requirements and necessitate that both states and tribes work closely together.

NOW THEREFORE BE IT RESOLVED, that the Tribal Nation members of the National Congress of American Indians hereby affirm their full rights as sovereign nations under ICWA and support the primacy of tribal courts in asserting jurisdiction over child welfare actions involving Indian children; and

BE IT FURTHER RESOLVED, that consistent with ICWA, child welfare actions for children who are members of federally recognized Tribal Nations or who are eligible for such membership should be decided by tribal courts, except in circumstances where a tribe has consented to or acquiesced to state jurisdiction and where the requirements of ICWA are otherwise satisfied; and

BE IT FURTHER RESOLVED, that the NCAI states their strong opposition to the illegal taking of Indian children and placement in foster care or adoptive homes in violation of ICWA and the aggressive attempts to abolish some or all of the law through frivolous litigation by private adoption and anti-sovereignty groups; and

BE IT FURTHER RESOLVED, that the NCAI urges all states and tribes to work together to plan and implement the recently issued ICWA regulations; and

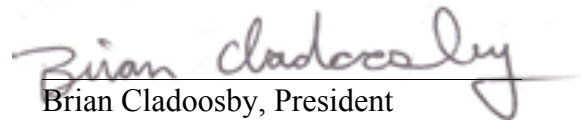
BE IT FURTHER RESOLVED, that NCAI calls upon the Whitehouse to convene Tribal Nations and other stakeholders to elevate the issue of ICWA compliance and educate members of Congress to the importance of ICWA in the well-being of Indian children, families, and tribes; and

BE IT FURTHER RESOLVED, that NCAI requests the Administration to increase their FY 2018 budget request for the ICWA, Title II Tribal Grant Program at least two-fold over FY 2016 enacted levels (\$15.6 million) to ensure that every tribe will have the capacity to support ICWA compliance by public and private agencies and state courts; and

BE IT FINALLY 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 2016 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center, October 9th- 14th 2016, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary