



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PDX-11-112

TITLE: Ensuring Compliance with the Indian Child Welfare Act and the Protection of Tribal Nations Children

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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 was enacted into law in 1978 to ameliorate the widespread abuses in private and public child welfare systems involving tribal nation children and families; and

WHEREAS, prior to the passage of the Indian Child Welfare Act the Association on American Indian Affairs conducted a study in the late 1960's and early 1970's that documented the rate of state removal of tribal nation children in out of home care averaged between 25% to 35% and in some jurisdictions was much higher; and

WHEREAS, in the last 33 years tribal nations have worked diligently to assist state and federal agencies in the implementation of the protections contained within the Indian Child Welfare Act, including but not limited to providing training, developing inter-governmental agreements and providing tribal staff and resources in ICWA cases; and

WHEREAS, in 2005 the General Accountability Office conducted a study to examine the status of implementation of the Indian Child Welfare Act and found that at least 32 states were out of compliance with some provisions of the Indian Child Welfare Act; and

WHEREAS, the study also recommended that the Department of Health and Human Services use data that was being collected by the states and sent to DHHS to develop improved technical assistance and training to states on implementation of ICWA, which was summarily rejected by DHHS in their response letter; and

WHEREAS, federal data collected by states on placements of children under their care in foster care (AFCARS) reveals a long trend of disproportionate placement

of tribal nation children in foster care and the data is considered to be a conservative estimate of the actual rates for these children; and

WHEREAS, no federal agency has made meaningful efforts to monitor and enforce the Indian Child Welfare Act despite federal mandates under ICWA and other federal mandates to improve outcomes for all children in the child welfare system and this lack of oversight has directly contributed to the high rates of placement of tribal nation children; and

WHEREAS, the Indian Child Welfare Act recognizes that it is in the best interest of tribal nation children to be placed with their families and within their nation to maintain the child's cultural, spiritual and emotional well-being and not following the protections and procedures contained within ICWA places these children at high risk of experiencing serious social problems; and

WHEREAS, over the last year National Public Radio conducted an investigation in South Dakota into the highly disproportionate placement of tribal nation children in the state foster care system which was presented in a three part series during October of 2011; and

WHEREAS, the NPR investigation found the following:

- Nationally, tribal nation children are more than twice as likely to be sent to foster care as other races even in similar circumstances
- Nearly 90% of tribal nation children placed in the South Dakota foster care system are placed in non-Indian homes
- The higher rates of removal of tribal nation children in South Dakota is occurring despite the lower than national average rate of child abuse with this population
- A number of licensed Indian foster homes in South Dakota are not being used to place tribal nation children.

WHEREAS, the NPR report revealed that this is not just a South Dakota problem.

NOW THEREFORE BE IT RESOLVED, that NCAI supports the findings of the NPR investigation and requests the Congress and the Obama Administration to further investigate the failure of states to comply with the Indian Child Welfare Act; and

BE IT FURTHER RESOLVED that immediate action be taken to improve federal oversight of the implementation of ICWA by state child welfare systems, including improved coordination and cooperation between the Departments of Interior and Health and Human Services; and

BE IT FURTHER RESOLVED that the Department of Interior take immediate action to ensure that BIA Social Services activities are conducted in full compliance with the ICWA and through close coordination with the affected tribal nations; and

BE IT FURTHER RESOLVED that Congress consider amendments to the ICWA to improve compliance with the Act, including provisions that would permit challenges by tribal nations and parents based upon a failure to comply with the placement preferences and that would mandate stricter oversight of state compliance by the federal government; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Annual Session of the National Congress of American Indians, held at the Oregon Convention Center in Portland, Oregon on October 30 –November 4, 2011, with a quorum present.

President

ATTEST:

Recording Secretary