



# Lower Sioux Indian Community in the State of Minnesota

P.O. Box 308 • 39527 Reservation Highway 1

Morton, MN 56270

*Cansayapi Otunwe*

February 3, 2023

The Honorable Mary Kunesh  
95 University Avenue W.  
Minnesota Senate Building, Room 3209  
St. Paul, MN 55155  
[Sen.mary.kunesh@senate.mn](mailto:Sen.mary.kunesh@senate.mn)

The Honorable Heather Keeler  
431 State Office Building  
St. Paul, MN 55155  
[rep.heather.keeler@house.mn.gov](mailto:rep.heather.keeler@house.mn.gov)

RE: S.F. 667 / H.F. 1071

Hau Senator Kunesh and Representative Keeler,

Congress enacted the Indian Child Welfare Act (“ICWA”) in 1978 to protect Indian culture and tribal integrity from the systematic removal of Indian children by public and private agencies resulting in Indian children being placed in foster care and adoptive homes at a rate nineteen (19) times higher than non-Indian children, and in some states, eighty-five percent (85%) of all Indian children were placed in non-Indian homes.

ICWA applies to all types of proceedings which may result in an Indian child being removed from the child’s parent or Indian custodian, except for custody actions between the parents or criminal/delinquency actions that are not status offenses. ICWA has long been recognized as the gold standard for child welfare policy and practice and has helped tens of thousands of Indian children and families find fairness and healing in state child welfare systems by establishing minimum standards for proceedings involving Indian children, including ensuring stability and security within Indian families, guaranteeing that tribal governments have a role in keeping Indian families together, and helping Indian children retain their cultural identity and heritage.

The Minnesota Legislature strengthened the ICWA protections for Indian families and Tribes by enacting the Minnesota Indian Family Preservation Act (“MIFPA”) in 1985 and adding amendments in 2015. Minnesota is one of five states that has an Indian family preservation act in place and other states look to MIFPA as a model for the codification of ICWA into state statute.

Preservation of ICWA and strengthening of MIFPA is of ongoing and critical importance for the Indian Tribes in Minnesota because out of home placement numbers remain high. In 2020, Indian children in our state were 16.4 percent (16.4%) more likely than white children to be placed-out-of-home; and since 2015, ICWA and the Department of the Interior rules implementing ICWA have been the subject of constant litigation challenging the constitutionality of ICWA. Since 2018,

a group of tribal attorneys, tribal staff, and ICWA allies (collectively referred to as the “Tribal MIFPA Workgroup”) have been drafting amendments to MIFPA and revising the Tribal State Agreement. That work continues and has been structured as three very important phases.

Phase I has resulted in S.F. 667 / H.F. 1071 in response to the United States Supreme Court acceptance of the case, *Brackeen v. Haaland*, heard on November 9, 2022, which involves constitutional challenges to ICWA on equal protection, anti commandeering, and commerce clause grounds.

The Minnesota Indian Family Preservation Act as it now stands, is supplemental to ICWA in that it does not address all of the provisions of ICWA and in some cases references portions of ICWA but does not state the specific requirements of ICWA. In the event that ICWA is found unconstitutional on the basis of anti- commandeering, or commerce clause grounds, we anticipate an overwhelming amount of litigation in the areas of Child Welfare and Family law. S.F. 667 / H.F. 1071 enacts all of the provisions of the ICWA expressly into Minnesota law to avoid this potential litigation.

The Tribal MIFPA Workgroup engaged with various stakeholders during the drafting process for S.F. 667 / H.F. 1071 including but not limited to the Minnesota Department of Human Services, the Minnesota Association of County Social Service Administrators, the Minnesota County Attorneys Association, the Association of County Attorneys, and the Association of Minnesota Counties.

S.F. 667 / H.F. 1071 ensures that all of the provisions of the ICWA are expressly stated in Minnesota law to ensure continued protections for Indian families and Tribes in Minnesota in the event that ICWA is found to be a violation of the commerce clause or is found to commandeer state agencies. There is little if any change to actual practice in S.F. 667 / H.F. 1071.

Phases II is underway and is focused on improving practices in all areas of law which may result in the removal of Indian children from their families. While Phase I did not impact practice, Phase II may. For that reason, it is the intention of the Tribal MIFPA Workgroup to engage with the various collaterals to ensure that future legislation is done in a way that is truly in the best interests of the Indian children, families and tribes.

The Lower Sioux Community Council supports the MIFPA revisions contained in S.F. 667 / H.F. 1071 – please refer to the enclosed Resolution 23-09. We ask that you vote in favor of S.F. 667 / H.F. 1071 during the current legislative session and that you support our future legislative efforts on these issues. The Community appreciates your support as authors carrying forward this important work in S.F. 667 / H.F. 1071.

Pidamaya-do,



Robert L. Larsen, President  
Lower Sioux Indian Community

Enclosure: Lower Sioux Community Council Resolution 23-09

cc: Governor Walz

Lieutenant Governor Flanagan

Sen. Kari Dziedic, Senate Majority Leader

Rep. Melissa Hortman, Speaker of the House



# Lower Sioux Indian Community in the State of Minnesota

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## LOWER SIOUX INDIAN COMMUNITY RESOLUTION NO. 23-09

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### SUPPORTING AMENDMENTS TO THE MINNESOTA INDIAN FAMILY PRESERVATION ACT

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WHEREAS, the Lower Sioux Indian Community in the State of Minnesota (“Community”) is a duly organized and federally- recognized Indian Tribe under 25 U.S.C. § 5123, and is governed by the terms of a Constitution and By-Laws originally adopted by the Community Members on May 16, 1936, and approved by the Secretary of the Interior on April 23, 1936; and,

WHEREAS, Pursuant to said Constitution and Bylaws, the Community Council of the Lower Sioux Indian Reservation (“Community Council”) is the governing body of the Community; and

WHEREAS, the Community Council has the authority, as enumerated in ARTICLE V – POWERS (a) to negotiate with the Federal, State, and local Governments on behalf of the Community...; (f) to manage all economic affairs and enterprises of the Community...; (g) to appropriate for public purposes of the Lower Sioux Indian Community available funds within the exclusive control of the Community...; (i) to safeguard and promote the peace, safety, morals, and general welfare of the Community by regulating the conduct of trade and the use and disposition of property upon the reservation...; (j) to establish ordinances...providing for the maintenance of law and order upon the Reservation...; (m) to encourage and foster the arts, crafts, traditions, and culture of the Community...; (o) to protect and preserve the property...of the Community...; and

WHEREAS, Congress enacted the Indian Child Welfare Act (“ICWA”) in 1978 to protect Indian culture and tribal integrity from the systematic removal of Indian children by public and private agencies; and

WHEREAS, prior to the passage of ICWA, Indian children were placed in foster care and adoptive homes at a rate nineteen (19) times higher than non-Indian children, and in some states, eighty-five percent (85%) of all Indian children were placed in non-Indian homes; and

WHEREAS, ICWA has been recognized as the gold standard for child welfare policy and practice and ICWA has helped tens of thousands of Indian children and families find fairness and healing in state child welfare systems; and

WHEREAS, ICWA has protected Indian children by establishing minimum standards for child welfare proceedings involving Indian children, ensuring stability and security within Indian families, guaranteeing that tribal governments have a role in keeping Indian families together, and helping Indian children retain their cultural identity and heritage; and

WHEREAS, the Minnesota Indian Family Preservation Act (“MIFPA”) was enacted by the Minnesota Legislature in 1985 and amended in 2015 and the purpose of MIFPA is to protect the long-term interests of Indian children, their families, and Indian tribes and to preserve Indian families and tribal identity; and

WHEREAS Minnesota is one of five states that has an Indian family preservation act in place and other states look to MIFPA as a model for the codification of ICWA into state statute; and

WHEREAS, preservation of ICWA and strengthening of MIFPA is of ongoing and critical importance for the Indian Tribes in Minnesota because in 2020, Indian children in our state were 16.4 percent (16.4%) more likely than white children to be placed-out-of-home; and

WHEREAS, since 2015, ICWA and the Department of the Interior rules implementing ICWA have been the subject of constant litigation challenging the constitutionality of ICWA; and

WHEREAS, on November 9, 2022, the Supreme Court of the United States heard oral arguments in *Brackeen v. Haaland* which involves constitutional challenges to ICWA on equal protection, anti-commandeering, and commerce clause grounds; and

WHEREAS, in response to nearly ten years of litigation and in an effort to further improve on the MIFPA, Tribal leaders in Minnesota tasked their attorneys with reviewing MIFPA and creating amendments that would codify ICWA and improve on its minimum requirements; and

WHEREAS, since 2018, a group of tribal attorneys, tribal staff, and ICWA allies (collectively referred to as the “MIFPA Workgroup”) have been drafting amendments to MIFPA; and



WHEREAS, the MIFPA Workgroup engaged with various stakeholders during the drafting process including but not limited to the Minnesota Department of Human Services, the Minnesota Association of County Social Service Administrators, the Minnesota County Attorneys Association, the Association of County Attorneys, and the Association of Minnesota Counties; and

WHEREAS, the MIFPA Workgroup recently finalized language that would amend MIFPA to ensure that MIFPA represents a stand-alone state statute and to ensure that existing protections of ICWA are incorporated in state law and to provide more clarity for everyone working in state proceedings involving Indian children.


**NOW THEREFORE BE IT RESOLVED**, the Community Council supports amending MIFPA to incorporate the language drafted by the MIFPA Workgroup; and

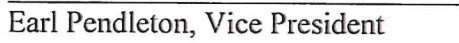
**BE IT FURTHER RESOLVED**, the Lower Sioux Indian Community in the State of Minnesota strongly urges the Minnesota Legislature to move swiftly on the language created by the MIFPA Workgroup to amend MIFPA to ensure that MIFPA is recognized as a stand-alone state statute, to further codify ICWA's protections into state law, and to provide more clarity to everyone working in state court proceedings that involve Indian; and


**BE IT FURTHER AND FINALLY RESOLVED**, the that the Community Council strongly urges Governor Walz to support this critically important effort.

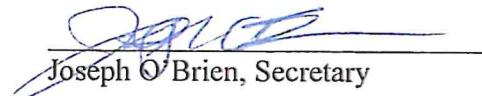
#### CERTIFICATION

We certify that Resolution No. 23 – 09 was duly adopted by the Community Council of the Lower Sioux Indian Community in the State of Minnesota at a meeting held on the 19 day of January, 2023, a quorum being present by a vote of 3 in favor, 0 opposed, and 0 abstaining.

  
Robert L. Larsen, President

  
Earl Pendleton, Vice President

  
Kevin O'Keefe, Treasurer

  
Joseph O'Brien, Secretary

  
Robert Prescott, Assistant Secretary-Treasurer