

Native American Rights Fund

EXECUTIVE DIRECTOR
John E. Echohawk

DEPUTY DIRECTOR
Matthew Campbell

**CASE SELECTION
COMMITTEE**
David L. Gover
Matthew L. Campbell
Jacqueline De León

ATTORNEYS
Matthew L. Campbell
Michael S. Carter
Jacqueline De León
K. Jerome Gottschalk
David L. Gover
Melody L. McCoy
Ada Montague Stepleton
Steven C. Moore
Allison Neswood
Susan Y. Noe
Brett Lee Shelton
Joe M. Tenorio
Beth Wright

CHIEF FINANCIAL OFFICER
Michael Kennedy

DIRECTOR OF DEVELOPMENT
Donald M. Ragona

CORPORATE SECRETARY
Sarah Palacios

1506 Broadway, Boulder, Colorado 80302-6296
(303) 447-8760 FAX (303) 443-7776
www.narf.org

WASHINGTON OFFICE
1514 P Street, NW (Rear)
Suite D
Washington, D.C. 20005-1910

Ph. (202) 785-4166
FAX (202) 822-0068

ATTORNEYS
Daniel D. Lewerenz
Samantha B. Kelty
Morgan Saunders

ANCHORAGE OFFICE
745 W. 4th Avenue, Ste. 502
Anchorage, AK 99501-1736

Ph. (907) 276-0680
FAX (907) 276-2466

ATTORNEYS
Erin C. Dougherty Lynch
Matthew N. Newman
Wesley J. Furlong
Megan Condon

February 10, 2023

Senator Mary K. Kunesh
Minnesota Senate Assistant Majority Leader
95 University Ave. W., Suite 3209
St. Paul, MN 55103

Re: Support of SF 667 and HF 1071 - Amendments to MIFPA

Dear Senator Kunesh,

The Native American Rights Fund (NARF) is pleased to write in support of the proposed amendments to the Minnesota Indian Family Preservation Act (MIFPA), SF 667 and HF 1071. State Indian child welfare legislation—known as State ICWAs—are an opportunity for states and Tribes to build on federal and tribal legislation and articulate additional detail and processes that enhance the state’s child welfare agency. More and more states are developing State ICWAs, and MIFPA has long been celebrated as a model for State ICWAs.

NARF is a national non-profit law firm with over 50 years of experience in litigation, policy work, and community education pertaining to the welfare of Native American and Alaska Native children. In addition to litigating at the state and federal level with the goal of preserving and enforcing the rights codified in ICWA, NARF published *A Practical Guide to the Indian Child Welfare Act* (ed. 2007)—the preeminent ICWA resource for practitioners and judges—and collates and publishes online up-to-date court decisions and developments in Indian child welfare law. I was a co-author of NARF’s ICWA Guide. Based on this experience, NARF endorses SF 667 and HF 1071 as critical reinforcements of ICWA’s promises to strengthen tribal sovereignty, preserve Native families, and ensure the best interests of Native children.

Congress enacted ICWA in 1978 in response to the widespread and systemic removal of Indian children by public and private agencies, often without evidence of harm and without due process of law. When ICWA was enacted, Indian children were being removed from their families at much higher rates than non-Indian children, permanently separated from their communities, and ultimately placed in non-Indian homes or institutions.

ICWA interrupted these practices by implementing minimum standards with four priorities: (1) ensuring that children are not removed from their families without evidence of harm, (2) family and tribal members are preferred as foster and adoptive placements, (3) child protection agencies make active efforts to reunify families, and (4) Tribes have the opportunity to intervene in child protection cases and transfer jurisdiction to their own courts, among other provisions. ICWA has long been recognized as the gold standard for child welfare policy. It has helped tens of thousands of Indian children retain connections to their families, communities, and cultures.

The Minnesota Legislature bolstered ICWA by enacting MIFPA in 1985 and amending it in 2015. MIFPA has been heralded as a model for codifying ICWA into state law and, together, MIFPA and ICWA have greatly improved child welfare practice in Minnesota. The importance and value of these twin laws is clear. However, there is more work to be done: Indian children in Minnesota are still disproportionately represented in Minnesota's child welfare system and are significantly more likely than white children to be removed and placed out of their homes. The MIFPA amendments that you are now considering recognize the partnership between Tribes and the State of Minnesota and will strengthen Minnesota's child welfare system.

In addition, these amendments strengthen MIFPA itself. While MIFPA has long been celebrated as a model for state Indian child protection legislation, it was designed to be supplemental to the federal Indian Child Welfare Act. MIFPA assumes ICWA as a starting point and complements tribal child protection laws and service. It does not reiterate all elements of ICWA, and in some cases references ICWA without restating the specific requirements of ICWA. If the United States Supreme Court invalidates ICWA on the grounds that Congress overreached in enacting its provisions—one of many arguments made by ICWA's opponents—MIFPA's continued effectiveness would be in question. The proposed amendments would allow MIFPA to stand on its own as a safeguard for Indian children, families, and Tribes in Minnesota.

The proposed amendments in SF 667 and HF 1071 would ensure that all of ICWA's provisions are explicitly stated in Minnesota law. Adopting SF 667 and HF 1071 thus would ensure stability for Minnesota's child welfare system in the event of upheaval in the federal legal landscape.

We urge the Minnesota Legislature to pass SF 667 and HF 1071. Thank you for your time and attention.

Most sincerely,

Patrice H. Kunesh

