Ho-Chunk Nation Legislature

Comments in Support of Minnesota H.F. 4838
Minnesota Indian Family Preservation Act Amendments
March 20, 2024

Representative Jamie Becker-Finn
Chair, House Judiciary Finance and Civil Law Committee
559 State Office Building
St. Paul, Minnesota 55155

Re: Support for the Minnesota Indian Family Preservation Act Amendments (H.F. 4838)

Chair Representative Becker-Finn and members of the House Judiciary Finance and Civil Law Committee:

The Ho-Chunk Nation ("Nation") appreciates the opportunity to provide written comments in support of the amendments being proposed to the Minnesota Indian Family Preservation Act ("MIFPA").

The Nation is a unique federally-recognized Tribe in that it lacks a reservation and a contiguous land base, but instead has pockets of trust land spread out across fifteen (15) counties in the state of Wisconsin. However, there are a number of allotments, totaling 302 acres, held in trust by the federal government for Hoocąk (Ho-Chunk) people located in Houston County, Minnesota. These lands are within aboriginal and ceded territory of the Ho-Chunk people. Throughout 1915 – 1955, lands were purchased for individual Ho-Chunks in the Town of Hokah and in the Town of La Crescent. Due to the presence of these trust allotment lands located in Houston County, Minnesota, the U.S. Department of Health and Human Services formerly recognizes Houston County, MN as part of the Nation's territory for its Contract Health Service Delivery Area (CHSDA), now referred to as Purchase Referred Care Delivery Area.[1]

The Nation's Legislature represents four legislative Districts, with District 4 encompassing all members residing outside of Wisconsin. All four of the current District 4 Representatives are currently residents of the State of Minnesota. Next to Wisconsin, the highest population of Ho-Chunk adults and minors is located in the State of Minnesota. Due to the Nation's removal history and relocation to several designated lands in Minnesota, it certainly makes sense that Minnesota would have the next highest Ho-Chunk population. Ultimately, the federal Indian Child Welfare Act ("ICWA") and MIFPA protect all federally-recognized Indian children regardless if their Tribe is located in the state where they reside. However, we provide this entirely too brief Minnesota Ho-

[1] 88 Fed. Reg. 37071-72 (June 6, 2023) (including footnote 22 that states "CHSDA counties for the Ho-Chunk Nation of Wisconsin were designated by regulation (42 CFR 136.22(a)(5)").

Chunk history and information to show that the Nation, while not one of the 11 federally-recognized Tribes associated with Minnesota or even state-recognized, has a heightened interest in seeing these amendments adopted.

While the Nation supports the amendments as presented, we wish to take the time to highlight several areas that we believe are particularly important to ensure the best interests of Indian children are always at the forefront of child welfare decision-making and that the true intent and spirit of the ICWA and MIFPA are met – the preservation of Indian families and Indian Tribes.

Definition of Extended Family Member (page 3, lines 3.22-3.29)

The addition of the language addressing parents/guardians/custodians of Indian children's siblings is an important addition. The intent of this language is not to contradict the *Sibling Bill of Rights* as argued by the Minnesota County Attorneys Association. The intent is to ensure that an Indian child's best interests are protected. The Indian child has a right to be placed in a home that reflects their culture and helps them maintain a relationship with their Tribal extended family and Tribe - and vice versa. Both MIFPA and federal law mandates this.

The Nation has seen provisions in other states, where a sibling's parents/guardians/custodians are deemed extended family members, result in a child's loss of culture when those siblings' parents/guardians/custodians have no Tribal affiliation and incentive to help the Indian child maintain a connection. Instead, the focus should be a concerted ongoing duty of the individual/agency who conducted a removal to follow appropriate placement preferences and then provide active efforts to keep siblings in close contact throughout the case while working to achieve reunification. (page 14, lines 14.15-14.20). It should be noted too, that these siblings are not always living together full-time at the time of removal. As such, many of these siblings are likely already accustomed to a visitation schedule. At the end of the day, the language clearly allows Tribes to recognize such individuals as extended family members if they so choose. So, any concerns raised regarding this provision seem unfounded.

Intervention of Foster Parents as Parties to Proceedings (page 20, lines 20.32-20.33; page 21, lines 21.1-21.3)

It is crucial that foster parents not be permitted intervention in Indian child custody proceedings. By moving foster parents to party status, it will create a system that will diminish the best interests of Indian children, as established and defined in Minn. Stat. § 260.755(2a)(2023).

Placing foster parents on the same footing as biological parents- implying that foster parents could ever possibly have rights akin to the constitutionally protected fundamental rights of a biological parent- is an invitation to lengthy litigation and appeals. Lengthy litigation and appeals are not in the best interests of an Indian child. Foster parents are not offered protections under federal ICWA, as they are not the ones needing protection; services; or placement, and they should likewise not receive any such elevated protections under MIFPA.

It was the intent of Congress to ensure that "white, middle-class standards" not be utilized in determining whether preferred placements are suitable.[2] "Discriminatory standards have

[2] H.R. Rep. No. 95-1386, 95th Cong. 2nd Sess. 24 (1978).

made it virtually impossible for most Indian couples to qualify as foster or adoptive parents, since they are based on middle-class values."[3]

> The importance of unique Indian social and cultural standards cannot be overemphasized – the historical lack of understanding of such standards by state courts and agencies, and the resulting effects on the populations of Indian tribes and the self identification of Indian children, is precisely why the ICWA was enacted, as "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children."[4]

The United States Supreme Court recently reiterated this when upholding the constitutionality of the Indian Child Welfare Act.

> In adopting the Indian Child Welfare Act, Congress exercised [ ] lawful authority to secure the right of Indian parents to raise their families as they please; the right of Indian children to grow in their culture; and the right of Indian communities to resist fading into the twilight of history. All of that is in keeping with the Constitution's original design.[5]

Thus, in determining the suitability of a potential home, the relevant standards must be "the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties."[6] This language illustrates that Congress intended agencies and state courts to look beyond just the reservation boundaries, and focus on social and cultural ties as well.

In states where the elevation of foster parents to party status is allowable, the Nation has spent a tremendous amount of time and resources battling non-Indian foster parents attempting to rip its children away from their social and cultural ties. We are battling against the white, middle-class discriminatory standards that the United States Congress noted was the very detriment to Indian Tribes and families and impetus for adopting the federal ICWA. We should instead be focused on helping raise the parents and Indian custodians up so that they have the healthy tools to address the historical traumas that have led to the removal of their children, so successful reunifications can result. And in the event reunification cannot occur within the timeframes arbitrarily established within the Adoption and Safe Families Act ("ASFA") - timeframes that do not take into account things like an individual still having Post-Acute Withdrawal Symptoms ("PAWS") two whole years after their last use of heroin for example - that these children be placed within a home of an extended family member or family that has the same Tribal social and cultural standards as the Indian child.

In short, by elevating foster parents to party status, it will detract from ensuring active efforts are being provided to reach reunification and that placement preferences are being followed. It will provide non-Indian foster parents a platform to advocate against the very protections afforded by the MIFPA and federal ICWA. Furthermore, this allowance can open doors to

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[3] H.R. Rep. No. 95-608, 95th Cong. 2nd Sess. 11 (1978).
[4] CALIFORNIA INDIAN LEGAL SERVICES, CALIFORNIA JUDGES BENCHGUIDE: THE INDIAN CHILD WELFARE ACT 46 (May 2010 ed.); *see also* 25 U.S.C. § 1901; *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 32-37 (1989).
[5] *Haaland v. Brackeen*, 143 S. Ct. 1609, 1661 (2023)(Gorsuch, J., concurring).
[6] 25 U.S.C. § 1915(d).

foster parents gaining access to potentially confidential and sensitive documentation that they should not be privy to regarding the parents or Indian custodians – information that could be used in not just degrading ways, but as ammunition in keeping Indian children away from their Indian families and Tribes. Everything about this is in direct opposition to what MIFPA and ICWA are about. As such, this provision is extremely valuable in ensuring the desired outcomes of MIFPA and ICWA are achieved.

Invalidation (page 26, lines 26.9-26.14)

One of the most difficult aspects of the federal ICWA is the fact that the only teeth the law has is the possibility of invalidation. While this is a powerful tool, and when timed and used effectively can still provide ample protection to children needing protection, it is not enough. The addition of the availability of "sanctions, reasonable costs, and attorney fees" is of utmost importance to help ensure ICWA and MIFPA compliance. The federal law has been in existence since 1978, federal advisory guidelines from 1979-2016, and federal regulations and guidelines since 2016 – yet we fail to see compliance across the country on a yearly basis. The addition of further tools to push compliance is absolutely necessary to protect our Indian children and future of our Tribes.

The proposed legislative amendments found in H.F. 4838 provide important tools to help our Hoocąk children have more positive outcomes while navigating a traumatic period of their lives. As such, we offer our support and appreciate the drafters and sponsors for their dedication to this important issue. There is nothing more important to a Tribe than its children. They are our future, and they will ultimately be the links to our past. It is likewise in their best interests to know and have the opportunity to learn about their Indian heritage and be connected with their tribal communities.

Thank you for the opportunity to share our support of H.F. 4838 and our hopes that MIFPA will be strengthened to protect our children.

Sincerely,

Karena Thundercloud
Vice President