



MILLE LACS BAND OF OJIBWE

Executive Branch of Tribal Government

Date: February, 10th, 2023

The Honorable Ron Latz
Minnesota Senate
Chairperson
Judiciary and Public Safety Committee
3105 Minnesota Senate Building
St. Paul, MN 55155

RE: SF 667

Dear Sen. Latz,

Thank you for your work on legislation to protect our American Indian children. 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.

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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.

A group of tribal attorneys, tribal staff, and ICWA allies (collectively referred to as the “Tribal MIFPA Workgroup”) have been drafting amendments to MIFPA which has resulted in SF 667 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, clause grounds.

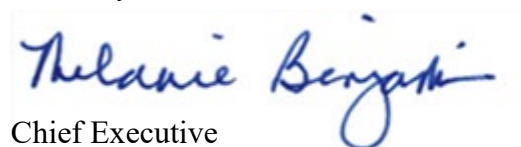
The Minnesota Indian Family Preservation Act as it now stands, is supplemental to ICWA in that it does not address all of the provisions of ICWA and in some cases references portions of ICWA but does not state the specific requirements of ICWA. In the event that ICWA is found unconstitutional on the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

SF 667 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 SF 667.

On behalf of the Mille Lacs Band of Ojibwe, I ask that you vote in favor of SF 667 during the current legislative session and that you support our future legislative efforts on these issues.

Sincerely,



Chief Executive