MARSHAL OF THE SUPREME COURT AND THE SUPREME COURT POLICE AUTHORITY EXTENSION ACT OF 1996

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 626, S. 2100.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2100) to provide for the extension of certain authority for the Marshal of the Supreme Court and the Supreme Court Police.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. LOTT. Mr. President, I ask unanimous consent the bill be deemed read a third time, the motion to reconsider be laid upon the table, and any statements relating to the bill appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2100) was deemed read the third time and passed, as follows:

S. 2100

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF AUTHORITY.

Section 9(c) of the Act entitled ''An Act relating to the policing of the building and grounds of the Supreme Court of the United States'', approved August 18, 1949 (40 U.S.C. 13n(c)) is amended in the first sentence by striking ''1996'' and inserting ''2000''.

INDIAN CHILD WELFARE ACT AMENDMENTS OF 1996

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 541, S. 1962.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1962) to amend the Indian Child Welfare Act of 1978, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 5405

(Purpose: To make technical corrections)

Mr. LOTT. Mr. President, I understand Senator MCCAIN has a technical amendment at the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT], for Mr. MCCAIN, proposes an amendment numbered 5405.

The amendment is as follows:

On page 13, line 18, insert ''if in the best interests of an Indian child,'' after ''approve,''.

On page 14, lines 15 and 16, strike the dash and all that follows through the paragraph designation and adjust the margin accordingly.

On page 14, line 16, insert a dash after ''willfully''.

On page 14, line 16, insert ''(1)'' before ''falsifies'' and adjust the margin accordingly.

Mr. LOTT. Mr. President, I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 5405) was agreed to.

Mr. MCCAIN. Mr. President, I wish to thank my colleagues for moving quickly to consideration of S. 1962, a bill to make certain compromise amendments to the Indian Child Welfare Act of 1978 [ICWA]. I urge its immediate adoption.

S. 1962 represents broad consensus legislation that has been crafted with great care to resolve many of the differences between Indian tribes and adoption advocates.

Let me say, first, that the issue of Indian child welfare stirs the deepest of emotions. Until nearly eighteen years ago, disproportionately high numbers of Indian children were virtually kidnapped from their families and tribal communities and placed in foster and adoptive care. Although sometimes these efforts were motivated by good intentions, the results were many times tragic. Generations of Indian children were denied their rich cultural and political heritage as Native Americans. The well-documented abuses from that dark era are horrifying. One study concluded that between 25 and 35 percent of all Indian children were torn from their birth families and tribes.

In 1978, Congressman Mo Udall and others in Congress responded to this crisis by enacting the Indian Child Welfare Act [ICWA] to prevent further abuses of Indian children. Under ICWA, adoptions of Indian children could still go forward, but the best interests of the Indian children had the additional protection of the involvement of their own tribe.

In recent years, a new tragedy has emerged as ICWA has been implemented, this one borne by non-Indian adoptive families who in a handful of high-profile cases have seen their adoptions of Indian children disrupted months and years after they have received the child.

In some of these controversial cases, people facilitating the adoptions have been accused of knowingly and willfully lying to the courts, the adoptive families, and the tribes, hiding the fact that these children were Indians covered by ICWA procedures. In other cases, some Indian tribes have been accused of retroactively conveying membership on a birth parent who wanted to revoke his or her consent long after the adoption placement was voluntarily established.

Because Indian tribes typically have not been made aware of an adoption, in most of the controversial cases, until very late in the placement, the tribes have been faced with a tragic choice—either intervene late in the proceeding and disrupt the certainty sought by the adoptive family and child, or stay out of the case and lose any chance to be involved in the life of the Indian child. The result has been great uncertainty and heartache on all sides. No matter the outcome in each of these cases, the Indian children have been the losers.

The measure we have under consideration today will amend ICWA to dramatically improve this situation. Mr. President, most of the people who deal on a daily basis with ICWA believe S. 1962 will make ICWA work much better for Indian children and for adoptive families.

S. 1962 will dramatically increase the opportunities for greater certainty, speed and stability in adoptions of Indian children. S. 1962 reflects the agreement of attorneys representing adoptive families and representatives of the Indian tribes. Enactment of the provisions they can agree upon will dramatically improve ICWA and clearly be in the best interests of the Indian children involved.

S. 1962 will change ICWA so that it better serves the best interests of Indian children without trampling on tribal sovereignty and without eroding fundamental principles of Federal-Indian law. The legislation will achieve greater certainty and speed in adoptions involving Indian children through new guarantees of early and effective notice in all cases combined with new, strict time restrictions placed on both the right of Indian tribes to intervene and the right of Indian birth parents to revoke their consent to an adoptive placement.

Perhaps of most interest to the Members of the Senate is the fact that the provisions of S. 1962 will encourage early identification of the cases involving controversy, and promote settlement by making visitation agreements enforceable. One example of such a case is that of a non-Indian Ohio couple, Jim and Colette Rost, who have been trying to adopt twin daughters—now nearly three years old—placed with them at birth by an adoption attorney who failed to disclose that the children were Indians. The Rost's current attorney now supports quick enactment by the Congress of the compromise provisions that comprise S. 1962 because they will provide authority where none exists to enforce a visitation agreement that will very likely settle the Rost and other similar cases.

I am very pleased with the provisions of this bill for another reason. I have long given active support to legislative efforts that encourage and facilitate adoptions in all instances. It is my belief that it is our solemn responsibility to work to increase the opportunities for all children to enjoy stable and loving family relationships as quickly as possible. At a minimum, this means removing every unreasonable obstacle to adoption. Equally important for me is the priority I place on encouraging adoption as a positive alternative to

abortion. Because of these considerations, I was an early and strong supporter of the 1996 amendments to the Multi-Ethnic Placement Act, facilitating adoptions, we recently sent to the President for signature into law. Likewise, I am deeply committed to enactment of the consensus-based provisions of S. 1962 because they will encourage and facilitate adoptions of Indian children, and, arguably, discourage abortions, by providing greater certainty, speed and stability to Indian adoptions than that provided under existing law.

Let me take a moment to clarify a related matter that has drawn some attention in recent days having to do with what is authorized, and what is not authorized, by subsection (h) of Section 8 dealing with the enforceability of visitation agreements after an adoption decree is final. First, I must stress the fact that subsection (h) addresses only those situations where all those involved in the voluntary adoption of an Indian child have voluntarily and mutually entered into an agreement on visitation. The parties to such an agreement may include the birth family, the adoptive family, and the child's Indian tribe. Subsection (h) could not, and should not, be construed to impose any right of visitation or contact not agreed to by those individuals involved in each case. The provision simply says that, if and only if those parties involved have agreed to certain terms for visitation or contact to take place after the adoption is final, then the agreement reached by the parties is enforceable against those parties in any court of law. If those involved have not agreed to visitation, then there is no agreement to enforce under the terms of subsection (h). I wish to emphasize that this provision does not create separate authority for any court or any party to impose upon another party a so-called open adoption; this would remain a matter for State law. The waiver of any individual privacy rights are exclusively within the hands of those individuals entering into, or refusing to enter into, such a voluntary agreement. Subsection (h) simply says that when the adoptive family and the others involved in a voluntary adoption proceeding under the Indian Child Welfare Act choose, of their own accord, to agree to certain visitation or contact privileges that can occur after the adoption is final, their agreement can be enforced by the courts. This authority is no different than the enforcement powers commonly exercised by courts over commercial agreements in which the parties demonstrate their good faith by agreeing to submit the terms of their agreement to judicial enforcement. I have asked as part of the Senate's consideration of this bill, that a minor amendment be made to subsection (h) to clarify what has been our intention all along, that a judge must consider what are the best interests of the child when the judge exercises his or her discretion as to whether or not to include provisions to enforce a voluntary visitation agreement in a final decree of adoption.

In addition, a concern has been raised about a matter that S. 1962 does not address in any way—that the adoptive placement preferences in the underlying ICWA law would lead an expectant mother seeking privacy to prefer abortion over adoption. Any close examination of the 1978 law will reveal that this concern about adoptive placement preferences is without reasonable foundation. Under title 25, U.S.C. section 1915(c), the 1978 act actually directs a State court judge to give weight to the placement choice of a birth parent who evidences a desire for privacy. The 1978 law declares that, as a matter of Federal-Indian child welfare policy, the best interests of Indian children are to be protected. Under title 25, U.S.C. section 1915 (a), a State court judge must give a ''preference'' to an Indian adoptive family in his or her adoptive placement decisions involving an Indian child, ''in the absence of good cause to the contrary.'' The presumption is that a placement with the child's Indian or non-Indian extended family, or with an Indian family, is in the best interest of the Indian child. These preferences are not mandatory quotas. They must be considered, but the State court judge has the discretion to prefer another placement if there is good cause. State court judges in many cases have found good cause for placing Indian children with non-Indian adoptive families for a variety of reasons, including the wishes of a birth parent, or the judge's determination that a particular non-Indian placement would be in the best interests of the child under the act given the particular facts of the case or the available placement options. Let me be clear—the bill before us today, S. 1962, does not in any way alter the existing law on adoptive placement preferences set forth in 25 U.S.C. 1915. No consensus could be reached on any changes to section 1915. However, because the preference provisions under section 1915 have been the subject of some misunderstandings during consideration of S. 1962, I thought it would be helpful at this juncture to recite what section 1915 does and does not do in order to remove any additional concerns that might arise in the future.

Finally, there is one other technical and conforming amendment that we have asked be made to the bill as reported, which would make clear that the sanctions mirror those found in title 18, section 1001, touching only upon willful and knowing acts or omissions. Through an oversight in drafting, the reported bill was not completely clear on this issue, and the technical change should resolve the questions that have been raised.

S. 1962 places new, strict time restrictions on the right of an Indian tribe to intervene in a State court adoption proceeding involving an Indian child. Under current law, a tribe can do so at any point up to entry of the final decree of adoption. The bill allows adoptive parents to limit this period to as little as 30 days after the tribe receives notice of a voluntary adoption proceeding. The bill makes many other changes to ICWA. With proper notice, an Indian tribe's failure to act early in the placement proceedings is final. A tribal waiver of its right is binding. An Indian tribe seeking to intervene must accompany its motion with a certification that the child is, or is eligible to be, a member of the tribe and document it. Once a tribe notifies a party or court that a child is not an Indian, the tribe cannot later change its mind. Unless we pass S. 1962, none of these restrictions will be law.

The bill places new, strict time restrictions on the right of birth parents to revoke their consent to an adoptive placement. Under current law, a birth parent can revoke consent at any time up to entry of the final decree of adoption. The bill limits revocations to the 180-day period following notice.

The bill requires that early notice be given to a tribe if a child is reasonably known to be an Indian. Attorneys who represent adoptive families tell me they welcome the chance to use this notice requirement so they can identify the relatively few cases involving controversy either before or within the first weeks of an adoptive placement. This would provide far more speed, stability and certainty than now exists under ICWA.

The bill promotes settlement of contested cases by providing judges with the authority, in their discretion, to enforce a settlement agreement voluntarily entered into by those involved in a case that would permit visitation or other agreed-upon contact after the adoption decree is final. Attorneys who represent adoptive families say this provision will encourage early settlements that do not disrupt placements and, because it offers them an opportunity to obtain enforceable agreements for future contact, will encourage the many pregnant women who seek such agreements to choose adoption over abortion.

Finally, the bill applies standard criminal penalties to knowing and willful efforts to lie, by persons other than birth parents, in a court proceeding subject to ICWA, about whether a child or a parent is an Indian. Attorneys representing adoptive families say these sanctions will help deter fraudulent conduct which, under current law, risks an eventual disruption of adoptive placements long after they have begun.

All of these changes are improvements to ICWA. They will make a pregnant woman's choice to place a child for adoption more attractive than it now is under current law. In turn, this should lead to fewer abortions.

Mr. President, I believe adoptive families simply seek certainty, speed, and stability throughout the adoption process. They do not want surprises

that threaten to take away from them a child for whom they have loved and cared for a substantial period of time. At the same time, Indian tribes simply seek early and substantive notice of proposed adoptions, the ability to become involved in the adoption process, and the continued protections of tribal sovereignty. They do not want to learn, many months and years after the fact, that their young tribal members have been placed for adoption outside of the Indian community. The landmark, compromise bill we have under consideration today will meet all of these concerns.

I am very pleased that what seemed a few months ago to be intractable problems with ICWA have in large part been resolved by the good faith efforts of representatives of the adoption attorneys and the Indian tribes. As with all compromises, each side would have preferred language that is better for them. But on behalf of the Indian children and their birth and adoptive parents, I want to extend my personal thanks to persons on all sides of this debate who have led the way to a compromise in which everyone, but most importantly, the Indian children, are the winners.

The national board of governors of the American Academy of Adoption Attorneys has endorsed the bill, as has the Academy of California Adoption Attorneys, the Child Welfare League of America, Catholic Charities USA, the U.S. Bureau of Catholic Indian Missions, the National Congress of American Indians, the National Indian Child Welfare Association, and virtually every Indian tribal government. Let me just stress that these all are organizations who have years of experience working with thousands upon thousands of Indian adoption cases. Catholic Charities USA, for example, is a pro-life organization that has 1,400 local agencies and institutions which last year provided adoption services for more than 42,000 people. Of perhaps equal note is the fact that the current attorney for the Rosts, an Ohio family trying to adopt twin Indian daughters who are members of a California tribe, helped draft the bill and has lent it strong support because its provisions would enable a final settlement of the Rost case controversy and settle or prevent many other cases like that involving the Rosts.

Mr. President, I ask unanimous consent that a copy of letters from the American Academy of Adoption Attorneys, the Child Welfare League of America, Catholic Charities USA, the U.S. Bureau of Catholic Indian Missions, and the Association on American Indian Affairs be reprinted in the CONGRESSIONAL RECORD at the conclusion of these remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

I am glad to see that Congresswoman DEBORAH PRYCE and Congressmen DON YOUNG, GEORGE MILLER, and BILL RICHARDSON have indicated their agreement with the approach taken in S. 1962. And S. 1962 has the strong support of the administration, including both the Department of the Interior and the Department of Justice. Because it is a delicately balanced compromise, I intend to urge our colleagues in the House to promptly adopt this bill without change so that it can be sent on to the President for signature into law as quickly as possible.

The compromise that is embodied in S. 1962 is the best that can be obtained. The alternative is to make no change to ICWA and lose this chance to improve ICWA for the sake of the best interests of Indian children. Mr. President, it is with these children on my mind and in my heart that I ask the Senate to enact S. 1962.

EXHIBIT 1

AMERICAN ACADEMY OF ADOPTION ATTORNEYS,
Washington, DC, August 21, 1996.

U.S. Senate, Committee on Indian Affairs, Washington, DC.

DEAR SENATOR MCCAIN and the Honorable Members of the Senate Committee on Indian Affairs: This letter is to reaffirm our support of S. 1962 notwithstanding the recent letter of Douglas Johnson (dated August 1, 1996) to Senator Lott asking that the bill be halted. Mr. Johnson does not explain in his letter how the bill might impact abortion, but instead quotes National Council for Adoption for the proposition that ''it would be the end of voluntary adoptions of children with any hint of Indian ancestry.'' Presumably, NCFA bases this assertion on the theory that agencies and attorneys would be so fearful of the criminal provisions of the amendments that they would refuse to work with birthparents of Indian ancestry. NCFA believes that the resultant projected inability of such birthparents to find professionals willing to help them place their children for adoption, would lead to more abortions. Though this reasoning is not spelled out it is the only connection to abortion we can possibly infer.

Our continued support of the bill is *not* based on a desire to see more abortions. Rather, we seriously question the basic premise of Mr. Johnson's letter that S. 1962 would have *any* impact on abortion.

The bill is intended to encourage the adoption of children of Indian ancestry by making such adoption *safer* for adoptive parents. The one or two percent of the children of Indian ancestry who are ''Indian children,'' as defined by the I.C.W.A., would be identified early in the process (likewise, the remaining 90% would be promptly identified as *not* subject to the I.C.W.A.).

Within a short time (compared to the present situation) tribes would be required to give adoptive parents notice of a potential problem and their failure to do so would eliminate the possibility of a problem. Because the bill would make adoption safer for adoptive parents, we support it.

The criminal sanctions contained in the bill deal with *fraudulent* efforts to avoid the law. Reputable agencies and attorneys do not commit fraud and have nothing to fear. The fact that adoption attorneys and agencies willing to comply with the I.C.W.A. support this bill, refutes the entire thrust of NRLC and NCFA's position.

Adoption attorneys and agencies should be more willing to work with birthparents of Indian ancestry if S. 1962 passes, than under present law. Pregnant women exploring adoption will find that more families will be desirous of adopting their children than they are today, and thus, they will have more alternatives to abortion.

Please do what you can to make S. 1962 the law immediately and count on our continued support.

Yours truly,

SAMUEL C. TOTARO, JR.,
President.

CHILD WELFARE LEAGUE OF AMERICA, INC.,
Washington, DC, September 10, 1996.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: I am writing in support of the amendments to the Indian Child Welfare Act outlined in both S. 1962 and H.R. 3828 as an alternative to earlier amendments outlined in H.R. 3286.

As you know the Child Welfare League of America is a national organization that is committed to preserving, protecting, and promoting the well-being of children and families. As such we believe that the principles outlined in the Indian Child Welfare Act provide an appropriate and necessary framework for addressing the permanency and child welfare needs of Indian children. We likewise believe that the ICWA amendments proposed in S. 1962 and H.R. 3828 support reasonable and effective improvements that will strengthen the implementation of ICWA in voluntary adoptions involving Indian children. First, they will help to strengthen the responsibility of agencies and individuals to conduct timely and time-limited notification to tribes and family members thereby promoting speedy movement toward adoption. Second, we believe that the amendments will discourage the dissolution of existing adoptions and provide greater security for Indian children and for their adoptive families.

We are encouraged that the process for developing these amendments has involved representatives from Indian Country and private adoption attorneys and that the proposed changes balance the needs of prospective adoptive parents and tribes while maintaining a focus on the permanency needs of Indian children. CWLA is optimistic that this bill will promote successful adoptions for Indian children who are in need of permanent families.

Sincerely,

DAVID LIEDERMAN,
Executive Director.

CATHOLIC CHARITIES USA,
Alexandria, VA, September 24, 1996.

Hon. JOHN MCCAIN,
Chair, Committee on Indian Affairs, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN MCCAIN: On behalf of Catholic Charities USA's 1,400 local agencies and institutions, I am writing to commend you for your efforts to reform problems in the current system of adoption of Native American children. Last year, our agencies provided adoption services for 42,134 people.

After consultation with our agencies in ''Indian Country,'' we have concluded that your bill to amend the Indian Child Welfare Act of 1978 (S. 1962) would improve the current rules for adoption of Native American children.

As you know, Catholic Charities USA's member agencies have a strong and unwavering commitment to the sanctity of every human life. Catholic Charities USA would not support any bill that we believe has potential for increasing abortions. We are convinced that your bill will make adoption a more attractive option than abortion to the women and families affected.

Please let us know how we can be helpful in assuring passage of your bill in this Congress.

Sincerely,

REV. FRED KAMMER, SJ,
President.

BUREAU OF CATHOLIC
INDIAN MISSIONS,
Washington, DC, September 4, 1996.

Senator TRENT LOTT,
Majority Leader, U.S. Senate, U.S. Congress, Washington, DC.

DEAR SENATOR LOTT: I am writing in support of the amendment, S. 1962, to keep in effect the basic provisions of the Indian Child Welfare Act of 1978. Those who are opposed to that act for fear that Indian women will be driven to seek abortions, I believe, are without grounds. It was not the attitude of Indians to seek abortions. Indians welcomed infants. As tribal people they see infants as the promise of the future.

As this legislation stands, it provides the efficiency, speed and certainly of adoption. Delays and prolonging of the process are excluded now that the time limits are reduced. The birth-mother does not have the uncertainty that the old law mandated. It is efficient and speedy. For mothers, unfortunately forced by circumstances to give up their children for adoption, this present bill provides the surest means for adoption.

Thank you!

Sincerely yours,

THEODORE F. ZUERN, S.J.,
Legislative Director.

[From the New York Times, August 17, 1996]

INDIAN ADOPTIONS AREN'T BLOCKED BY LAW

To the Editor: Assertions by Representative Pete Geren that the Indian Child Welfare Act applies to anyone with the remotest ancestry and supplies tribes with veto power over off-reservations adoptions are wrong (letter, July 26).

Ancestry alone does not trigger the provisions of the law. The law applies only when a child is a member of an Indian tribe or is the child of a member and eligible for membership. The notion that a person whose family has had no contact with an Indian tribe for generations would suddenly become subject to the law is not reality.

Even if a child is covered by the law, a tribe cannot veto a placement sought by a birth parent. If the law applies, the tribe may intervene in the state court proceeding. It may seek to transfer the case to tribal court, but an objection by either birth parent would prevent that.

Even where a parent does not object, a state court may deny transfer for good cause. If the case remains in state court, the tribe may seek to apply the placement preferences in the law (extended family, tribal members and other Indian families, in that order), but the state court may place a child outside the preferences if it finds good cause to do so.

The Indian Child Welfare Act was enacted in response to a tragedy. Studies revealed that 25 percent to 30 percent of Indian children had been separated from their families and communities, usually without just cause, and placed mostly with non-Indian families. The act formalized the authority of tribes in the child welfare process in order to protect Indian children and provided procedural protections to families to prevent arbitrary removals and placements of Indian children.

The law is based upon a conclusion, supported by clinical evidence, that it is usually in an Indian child's best interest to retain a connection with his or her tribe and heritage.

Mr. GLENN. Mr. President, I am pleased to support passage of this legislation to amend the Indian Child Welfare Act (ICWA). By clarifying and improving a number of provisions of ICWA, this legislation brings more stability and certainty to Indian child adoptions while preserving the underlying policies and objectives of ICWA. This bill embodies the consensus agreement reached when Indian tribes from around the Nation met in Tulsa, OK, to address questions regarding ICWA's application. Mr. President, I believe that the overriding goal of this agreement, which I support, is to serve the best interests of children.

This bill deals with several issues critical to the application of ICWA to child custody proceedings including notice to Indian tribes for voluntary adoptions, time lines for tribal intervention in voluntary cases, criminal sanctions to discourage fraudulent practices in Indian adoptions and a mandate that attorneys and adoption agencies must inform Indian parents under ICWA. I believe that the formal notice requirements to the potentially affected tribe as well as the time limits for tribal intervention after the tribe has been notified are significant improvements in providing needed certainty in placement proceedings.

Mr. President, I am also pleased that this legislation contains provisions addressing my specific concern—the retroactive application of ICWA in child custody proceedings. ICWA currently allows biological parents to withdraw their consent to an adoption for up to 2 years until the adoption is finalized. With the proposed changes, the time that the biological parents may withdraw their consent under ICWA is substantially reduced. I believe that a shorter deadline provides greater certainty for the potential adoptive family, the Indian family, the tribe and the extended family. This certainty is vital for the preservation of the interest of the child.

Mr. President, my concern with this issue and my insistence on the need to address the problem of retroactive application of ICWA was a direct response to a situation with a family in Columbus, OH. The Rost family of Columbus received custody of twin baby girls in the State of California in November, 1993, following the relinquishment of parental rights by both birth parents. The biological father did not disclose his native American heritage in response to a specific question on the relinquishment document. In February 1994, the birth father informed his mother of the pending adoption of the twins. Two months later, in April 1994, the birth father's mother enrolled herself, the birth father and the twins with the Pomo Indian Tribe in California. The adoption agency was then notified that the adoption could not be finalized without a determination of the applicability of ICWA.

The Rost situation made me aware of the harmful impact that retroactive application of ICWA could have on children. While I would have preferred tighter restrictions to preclude other families enduring the hardship the Rosts have experienced, I appreciated the effort of Senator MCCAIN, other members of the committee and the Indian tribes to address these concerns. I believe that the combination of measures contained in this bill will significantly lessen the possibility of future Rost cases. Taken together the imposition of criminal sanctions for attorneys and adoption agencies that knowingly violate ICWA, the imposition of formal notice requirements and the imposition of deadlines for tribal intervention, provide new protection in law for children and families involved in child custody proceedings.

Mr. President, I have reviewed the Rost case to reiterate that my interest in reforming ICWA has been limited to the issue of retroactive application. Once a voluntary legal agreement has been entered into, I do not believe that it is in the best interest of the child for this proceeding to be disrupted because of the retroactive application of ICWA. To allow this to happen could have a harmful impact on the child. I know that my colleagues share my overriding concern in assuring the best interest of children, and I am pleased that the bill we are passing today reflects that concern.

Mr. LOTT. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed, as amended, the motion to reconsider be laid upon the table and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1962), as amended, was passed as follows:

S. 1962

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Indian Child Welfare Act Amendments of 1996''.

(b) REFERENCES.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

SEC. 2. EXCLUSIVE JURISDICTION.

Section 101(a) (25 U.S.C. 1911(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by striking the last sentence and inserting the following:

''(2) An Indian tribe shall retain exclusive jurisdiction over any child custody proceeding that involves an Indian child, notwithstanding any subsequent change in the residence or domicile of the Indian child, in any case in which the Indian child—

''(A) resides or is domiciled within the reservation of the Indian tribe and is made a ward of a tribal court of that Indian tribe; or

''(B) after a transfer of jurisdiction is carried out under subsection (b), becomes a ward of a tribal court of that Indian tribe.''.

SEC. 3. INTERVENTION IN STATE COURT PROCEEDINGS.

Section 101(c) (25 U.S.C. 1911(c)) is amended by striking ''In any State court proceeding'' and inserting ''Except as provided in section 103(e), in any State court proceeding''.

SEC. 4. VOLUNTARY TERMINATION OF PARENTAL RIGHTS.

Section 103(a) (25 U.S.C. 1913(a)) is amended—

(1) by inserting ''(1)'' before ''Where'';

(2) by striking ''foster care placement'' and inserting ''foster care or preadoptive or adoptive placement'';

(3) by striking ''judge's certificate that the terms'' and inserting the following: ''judge's certificate that—

''(A) the terms'';

(4) by striking ''or Indian custodian.'' and inserting ''or Indian custodian; and'';

(5) by inserting after subparagraph (A), as designated by paragraph (3) of this subsection, the following new subparagraph:

''(B) any attorney or public or private agency that facilitates the voluntary termination of parental rights or preadoptive or adoptive placement has informed the natural parents of the placement options with respect to the child involved, has informed those parents of the applicable provisions of this Act, and has certified that the natural parents will be notified within 10 days of any change in the adoptive placement.'';

(6) by striking ''The court shall also certify'' and inserting the following:

''(2) The court shall also certify'';

(7) by striking ''Any consent given prior to,'' and inserting the following:

''(3) Any consent given prior to,''; and

(8) by adding at the end the following new paragraph:

''(4) An Indian custodian who has the legal authority to consent to an adoptive placement shall be treated as a parent for the purposes of the notice and consent to adoption provisions of this Act.''.

SEC. 5. WITHDRAWAL OF CONSENT.

Section 103(b) (25 U.S.C. 1913(b)) is amended—

(1) by inserting ''(1)'' before ''Any''; and

(2) by adding at the end the following new paragraphs:

''(2) Except as provided in paragraph (4), a consent to adoption of an Indian child or voluntary termination of parental rights to an Indian child may be revoked, only if—

''(A) no final decree of adoption has been entered; and

''(B)(i) the adoptive placement specified by the parent terminates; or

''(ii) the revocation occurs before the later of the end of—

''(I) the 180-day period beginning on the date on which the Indian child's tribe receives written notice of the adoptive placement provided in accordance with the requirements of subsections (c) and (d); or

''(II) the 30-day period beginning on the date on which the parent who revokes consent receives notice of the commencement of the adoption proceeding that includes an explanation of the revocation period specified in this subclause.

''(3) The Indian child with respect to whom a revocation under paragraph (2) is made shall be returned to the parent who revokes consent immediately upon an effective revocation under that paragraph.

''(4) Subject to paragraph (6), if, by the end of the applicable period determined under subclause (I) or (II) of paragraph (2)(B)(ii), a consent to adoption or voluntary termination of parental rights has not been revoked, beginning after that date, a parent may revoke such a consent only—

''(A) pursuant to applicable State law; or

''(B) if the parent of the Indian child involved petitions a court of competent jurisdiction, and the court finds that the consent to adoption or voluntary termination of parental rights was obtained through fraud or duress.

''(5) Subject to paragraph (6), if a consent to adoption or voluntary termination of parental rights is revoked under paragraph (4)(B), with respect to the Indian child involved—

''(A) in a manner consistent with paragraph (3), the child shall be returned immediately to the parent who revokes consent; and

''(B) if a final decree of adoption has been entered, that final decree shall be vacated.

''(6) Except as otherwise provided under applicable State law, no adoption that has been in effect for a period longer than or equal to 2 years may be invalidated under this subsection.''.

SEC. 6. NOTICE TO INDIAN TRIBES.

Section 103(c) (25 U.S.C. 1913(c)) is amended to read as follows:

''(c)(1) A party that seeks the voluntary placement of an Indian child or the voluntary termination of the parental rights of a parent of an Indian child shall provide written notice of the placement or proceeding to the Indian child's tribe. A notice under this subsection shall be sent by registered mail (return receipt requested) to the Indian child's tribe, not later than the applicable date specified in paragraph (2) or (3).

''(2)(A) Except as provided in paragraph (3), notice shall be provided under paragraph (1) in each of the following cases:

''(i) Not later than 100 days after any foster care placement of an Indian child occurs.

''(ii) Not later than 5 days after any preadoptive or adoptive placement of an Indian child.

''(iii) Not later than 10 days after the commencement of any proceeding for a termination of parental rights to an Indian child.

''(iv) Not later than 10 days after the commencement of any adoption proceeding concerning an Indian child.

''(B) A notice described in subparagraph (A)(ii) may be provided before the birth of an Indian child if a party referred to in paragraph (1) contemplates a specific adoptive or preadoptive placement.

''(3) If, after the expiration of the applicable period specified in paragraph (2), a party referred to in paragraph (1) discovers that the child involved may be an Indian child—

''(A) the party shall provide notice under paragraph (1) not later than 10 days after the discovery; and

''(B) any applicable time limit specified in subsection (e) shall apply to the notice provided under subparagraph (A) only if the party referred to in paragraph (1) has, on or before commencement of the placement, made reasonable inquiry concerning whether the child involved may be an Indian child.''.

SEC. 7. CONTENT OF NOTICE.

Section 103(d) (25 U.S.C. 1913(d)) is amended to read as follows:

''(d) Each written notice provided under subsection (c) shall contain the following:

''(1) The name of the Indian child involved, and the actual or anticipated date and place of birth of the Indian child.

''(2) A list containing the name, address, date of birth, and (if applicable) the maiden name of each Indian parent and grandparent of the Indian child, if—

''(A) known after inquiry of—

''(i) the birth parent placing the child or relinquishing parental rights; and

''(ii) the other birth parent (if available); or

''(B) otherwise ascertainable through other reasonable inquiry.

''(3) A list containing the name and address of each known extended family member (if any), that has priority in placement under section 105.

''(4) A statement of the reasons why the child involved may be an Indian child.

''(5) The names and addresses of the parties involved in any applicable proceeding in a State court.

''(6)(A) The name and address of the State court in which a proceeding referred to in paragraph (5) is pending, or will be filed; and

''(B) the date and time of any related court proceeding that is scheduled as of the date on which the notice is provided under this subsection.

''(7) If any, the tribal affiliation of the prospective adoptive parents.

''(8) The name and address of any public or private social service agency or adoption agency involved.

''(9) An identification of any Indian tribe with respect to which the Indian child or parent may be a member.

''(10) A statement that each Indian tribe identified under paragraph (9) may have the right to intervene in the proceeding referred to in paragraph (5).

''(11) An inquiry concerning whether the Indian tribe that receives notice under subsection (c) intends to intervene under subsection (e) or waive any such right to intervention.

''(12) A statement that, if the Indian tribe that receives notice under subsection (c) fails to respond in accordance with subsection (e) by the applicable date specified in that subsection, the right of that Indian tribe to intervene in the proceeding involved shall be considered to have been waived by that Indian tribe.''.

SEC. 8. INTERVENTION BY INDIAN TRIBE.

Section 103 (25 U.S.C. 1913) is amended by adding at the end the following new subsections:

''(e)(1) The Indian child's tribe shall have the right to intervene at any time in a voluntary child custody proceeding in a State court only if—

''(A) in the case of a voluntary proceeding to terminate parental rights, the Indian tribe filed a notice of intent to intervene or a written objection to the termination, not later than 30 days after receiving notice that was provided in accordance with the requirements of subsections (c) and (d); or

''(B) in the case of a voluntary adoption proceeding, the Indian tribe filed a notice of intent to intervene or a written objection to the adoptive placement, not later than the later of—

''(i) 90 days after receiving notice of the adoptive placement that was provided in accordance with the requirements of subsections (c) and (d); or

''(ii) 30 days after receiving a notice of the voluntary adoption proceeding that was provided in accordance with the requirements of subsections (c) and (d).

''(2)(A) Except as provided in subparagraph (B), the Indian child's tribe shall have the right to intervene at any time in a voluntary child custody proceeding in a State court in any case in which the Indian tribe did not receive written notice provided in accordance with the requirements of subsections (c) and (d).

''(B) An Indian tribe may not intervene in any voluntary child custody proceeding in a State court if the Indian tribe gives written notice to the State court or any party involved of—

''(i) the intent of the Indian tribe not to intervene in the proceeding; or

''(ii) the determination by the Indian tribe that—

''(I) the child involved is not a member of, or is not eligible for membership in, the Indian tribe; or

''(II) neither parent of the child is a member of the Indian tribe.

''(3) If an Indian tribe files a motion for intervention in a State court under this subsection, the Indian tribe shall submit to the court, at the same time as the Indian tribe files that motion, a certification that includes a statement that documents, with respect to the Indian child involved, the membership or eligibility for membership of that Indian child in the Indian tribe under applicable tribal law.

''(f) Any act or failure to act of an Indian tribe under subsection (e) shall not—

''(1) affect any placement preference or other right of any individual under this Act;

''(2) preclude the Indian tribe of the Indian child that is the subject of an action taken by the Indian tribe under subsection (e) from intervening in a proceeding concerning that Indian child if a proposed adoptive placement of that Indian child is changed after that action is taken; or

''(3) except as specifically provided in subsection (e), affect the applicability of this Act.

''(g) Notwithstanding any other provision of law, no proceeding for a voluntary termination of parental rights or adoption of an Indian child may be conducted under applicable State law before the date that is 30 days after the Indian child's tribe receives notice of that proceeding that was provided in accordance with the requirements of subsections (c) and (d).

''(h) Notwithstanding any other provision of law (including any State law)—

''(1) a court may approve, if in the best interests of an Indian child, as part of an adoption decree of an Indian child, an agreement that states that a birth parent, an extended family member, or the Indian child's tribe shall have an enforceable right of visitation or continued contact with the Indian child after the entry of a final decree of adoption; and

''(2) the failure to comply with any provision of a court order concerning the continued visitation or contact referred to in paragraph (1) shall not be considered to be grounds for setting aside a final decree of adoption.''.

SEC. 9. FRAUDULENT REPRESENTATION.

Title I of the Indian Child Welfare Act of 1978 is amended by adding at the end the following new section:

''SEC. 114. FRAUDULENT REPRESENTATION.

''(a) IN GENERAL.—With respect to any proceeding subject to this Act involving an Indian child or a child who may be considered to be an Indian child for purposes of this Act, a person, other than a birth parent of the child, shall, upon conviction, be subject to a criminal sanction under subsection (b) if that person knowingly and willfully—

''(1) falsifies, conceals, or covers up by any trick, scheme, or device, a material fact concerning whether, for purposes of this Act—

''(A) a child is an Indian child; or

''(B) a parent is an Indian; or

''(2)(A) makes any false, fictitious, or fraudulent statement, omission, or representation; or

''(B) falsifies a written document knowing that the document contains a false, fictitious, or fraudulent statement or entry relating to a material fact described in paragraph (1).

''(b) CRIMINAL SANCTIONS.—The criminal sanctions for a violation referred to in subsection (a) are as follows:

''(1) For an initial violation, a person shall be fined in accordance with section 3571 of title 18, United States Code, or imprisoned not more than 1 year, or both.

''(2) For any subsequent violation, a person shall be fined in accordance with section 3571 of title 18, United States Code, or imprisoned not more than 5 years, or both.''.

AUTHORIZATION FOR PRODUCTION OF DOCUMENTS BY COMMITTEE ON INDIAN AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 302, submitted earlier today by Senators LOTT and DASCHLE.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 302) to authorize production of records by the Committee on Indian Affairs.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

AUTHORIZATION FOR PRODUCTION OF DOCUMENTS BY COMMITTEE ON INDIAN AFFAIRS

Mr. LOTT. Mr. President, the Committee on Indian Affairs has received requests from the U.S. Department of Justice and counsel for the plaintiff-relators and for the defendant in a civil action captioned United States of America ex rel. William I. Koch, et al. versus Koch Industries, Inc., et al., pending in the northern district of Oklahoma, for access to committee records amassed in the course of an investigation in 1988 and 1989 by the committee's Special Committee on Investigations into allegations of theft of natural resources from Indian lands. The lawsuit is a qui tam fraud action, which similarly alleges theft of oil and gas resources from Federal and Indian lands and seeks monetary recovery on behalf of the United States.

In the interest of assisting in the development of a full evidentiary record for the trial of these claims, this resolution would authorize the chairman and ranking minority member of the Indian Affairs Committee to respond to these, and any future, requests for access to these records, except for the committee's internal deliberative or confidential records, for which the committee would maintain its privilege.

Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statement relating to the resolution appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 302) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 302

Whereas, the United States Department of Justice and counsel for the plaintiff-relators and defendant in the case of United States of America ex rel. William I. Koch, et al. v. Koch Industries, Inc., et al., Case No. 91–CV–763–B, pending in the United States District Court for the Northern District of Oklahoma, have requested that the Committee on Indian Affairs provide them with copies of records of the former Special Committee on Investigations of the Committee on Indian Affairs for use in connection with the pending civil action;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that documents, papers, and records under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Ranking Minority Member of the Committee on Indian Affairs, acting jointly, are authorized to provide to the United States Department of Justice, counsel for the plaintiff-relators and defendant in United States of America ex rel. William I. Koch, et al. v. Koch Industries, Inc., et al., and other requesting individuals and entitles, copies of records of the Special Committee on Investigations for use in connection with pending legal proceedings, except concerning matters for which a privilege should be asserted.

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 1996

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 585, S. 1791.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1791) to increase, effective as of December 1, 1996, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans, and other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SIMPSON. Mr. President, it is a pleasure for me, as chairman of the Senate Committee on Veterans' Affairs, to request Senate approval of S. 1791. This legislation, Mr. President, would grant to recipients of compensation, and dependency and indemnity compensation [DIC] benefits, from the Department of Veterans Affairs [VA] a cost of living adjustment [COLA] increase to take effect at the beginning of next year.

This legislation is appropriate and warranted—even as we continue to work diligently to achieve deficit reduction. We can balance the budget, and simultaneously treat our veterans, and their survivors, with fairness and compassion.

This bill is simple and straightforward. It would grant to recipients of certain VA benefits—most notably,