Legislative Update on ICWA Amendments

Joan Heifetz Hollinger

Berkeley Law

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In lieu of the Pryce Bill, the Senate Indian Affairs Committee unanimously approved S.1962 in late July 1996. This Bill, drafted by tribal and adoption lawyers from around the country, leaves intact ICWA's definitions of "Indian child" and "Indian family," and focuses instead on procedural issues.

The Bill addresses tribal concerns by mandating notice to tribes in all voluntary adoptive placements whenever there is reason to believe the child might have a tribal affiliation and imposes criminal penalties on agencies or lawyers who knowingly conceal a child's Indian heritage. To address concerns about maintaining Indian cultural heritage for children adopted by non-Indians, the Bill permits courts to approve agreements for post-adoption contact or visitation between the child and Indian family members.

S. 1962 also contains provisions which favor adoptive rights. The Senate Bill requires tribes to respond to notices within specific time limits or lose the right to intervene. It allows adoptive parents to rely on a tribe's initial disclaimer of interest and shortens the time within which a birth parent may revoke consent to the adoption of an Indian child. By leaving the Bridget R. holding intact, S. 1962 implicitly allows courts to continue to find, either as a matter of statutory or Constitutional analysis, that the existing Indian family doctrine justifies excluding many non-reservation parents and their children from ICWA.

The Senate Bill is vehemently opposed by some who fear that, because millions of Americans have some trace of Indian blood, agencies or lawyers will have to notify a tribe or the Bureau of Indian Affairs in all voluntary placements or face possible criminal prosecution. Many others believe that fewer adoptions will be disrupted if accurate information about a child's heritage is sought at the outset.

As of August 1, 1996, enactment of S.1962 and an identical Bill introduced in the House seemed likely, but as with other legislative proposals in the 104th Congress, by no means certain.