JANEL BRANDTJEN

STATE REPRESENTATIVE • 22ND ASSEMBLY DISTRICT

Thank you Chairman Snyder and the members of the Assembly Committee on Children and Families for hearing AB 138. This bill is a bipartisan bill that addresses a list of concerns regarding adoption in Wisconsin. Wisconsin is known throughout the adoption community as a difficult state to adoption children in; AB 138 will go a long way to correct that perception. We can all agree that promoting an environment where children can grow up with loving and caring parents, who have the will and the means to raise healthy children, is a worthy endeavor.

AB 138 was written to help birth parents avoid the stress and anxiety of appearing in court and consent to the termination of their parental rights (TPR). Appearing in court is often traumatizing for parents who have decided to terminate their parental rights. This bill creates a system for birth parents to terminate their parental rights through a witnessed and notarized affidavit versus testifying in court. This reduces the court process but still provides protections for the father, or alleged father, and biological mother. A disclaimer of parental rights may be executed before the birth of the child by the father, or alleged father, but not the mother, and may not be executed by either parent between the child's birth and 120 hours after the child's birth, or on or after the child's first birthday. If not revoked by the applicable time limit, the disclaimer is irrevocable unless obtained by fraud or duress. A minor may use an affidavit only after a TPR petition has been filed, or he or she has been offered legal counseling and appointed a guardian ad litem with the disclaimer approval of the guardian ad litem. SB 29 also allows payments to be made to an out-of-state private child-placing agency that is licensed in the state and certified by the Department of Children and Families. This affidavit process that is used in other states allows the children in these situations to make a swift and uncomplicated living change without a vicious back and forth cycle.

AB 138 does the following to streamline the adoption process in Wisconsin:

1. Eliminates the requirement of a fact-finding hearing and dispositional hearing in a TPR proceeding by offering an affidavit process which will significantly reduce the time it takes to adopt a child in Wisconsin. The affidavit process will provide a method by which a mother, father, or alleged or presumed father, may disclaim his or her parental rights with respect to a child in writing, as an alternative to appearing in court to consent to the termination of his or her parental rights.

2. Provides that an alleged father of a nonmarital child, whose paternity has not been established, is entitled to actual notice of a TPR proceeding and the resulting rights of standing in that proceeding, only if that person has filed a declaration of paternal interest.

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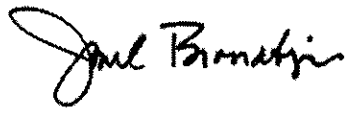
3. Allows payments to be made to a licensed out-of-state private child-placing agency for services provided in connection with an adoption.

I have personally witnessed the unneeded pain and turmoil suffered by children who are waiting for the chaos in their lives to end and the stability of a permanent family structure to begin. We believe these simple changes to Wisconsin's adoption laws will make a positive difference in the lives of many Wisconsin children. Every child deserves a happy and loving home.

Thank you,



State Representative Janel Brandtjen

ANDRÉ JACQUE
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Testimony before the Assembly Committee on Children and Families
Senator André Jacque
March 24, 2021

Chairman Snyder and Committee Members,

Thank you for the opportunity to testify before you with Rep. Brandtjen today as the Senate author of the Adoption Process Reform Act, critically needed legislation with solid bi-partisan support. Adoption in the United States is a complex patchwork of law and practice that imposes considerable strain on those navigating it. According to the most recent state-by-state statistical review of adoption, published by the Children's Bureau of the U.S. Department of Health & Human Services in 2011, Wisconsin ranks behind 37 states and the District of Columbia in the rate of adoptions completed in our state, even lagging behind several less populated states in the number of total adoptions. The difficult and uncertain court process faced by prospective birthparents and adoptive parents in Wisconsin is often cited as a factor, leading families seeking to adopt to look out of state. Several multi-state adoption agencies have indicated that they do not finalize adoptions in Wisconsin due to the length and complexity of the court process; one prominent interstate adoption agency assists in placements in 46 states, but notably, Wisconsin is not among them.

Assembly Bill 138, The Adoption Process Reform Act, makes a significant reform to Wisconsin's adoption system at the request of birth parents, adoptive parents, adoption attorneys and adoption agencies, and in consultation with the Department of Children and Families and Wisconsin's Native American Tribes:

1. Adding the option for birthparents of a child under one year of age to invoke the termination of their parental rights (TPR) through a witnessed and notarized affidavit without the requirement to endure a lengthy court process. Such an alternative is commonly used in the majority of states throughout the U.S. and is considered a best practice.

This change will create a system that is easier to navigate for birthparents by removing the fear and uncertainty surrounding mandatory court proceedings which can make them feel like they are being penalized for their decision, particularly if such proceedings would potentially require them to relive traumatic events. This option would also remove a large portion of uncertainty for adoptive parents about the permanency of the placement of a child with them, which would encourage more adoptions to take place in Wisconsin.

By allowing parents to voluntarily disclaim their parental rights after 120 hours from the birth of the child, Assembly Bill 138 brings more consistency to Wisconsin's adoption process instead of variability from county to county and judge to judge, while reducing unnecessary court time and costs for the completion of the adoption. A minor may use an affidavit of disclaimer only after the TPR petition has been filed, they have been offered legal counseling, and they have been appointed a guardian ad litem, and only if the guardian ad litem approves the disclaimer.

2. Expanding parental options by allowing payments to be made to a licensed out-of-state private child placing agency for services provided in connection with an adoption.

Both components of the bill require compliance with the federal Indian Child Welfare Act.

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Assembly Bill 138 does not impact the other requirements of the domestic adoption process in Wisconsin, including selecting an agency and completing a home study, which encompasses background checks, home inspections and interviews about family, background, finances and reasons for wanting to adopt. Wisconsin law requires that women considering adoption be provided counseling and certain living expenses up to $5,000.

Thank you for your consideration of Assembly Bill 138.

Wisconsin Department of
Children and Families

Governor Tony Evers
Secretary Emilie Amundson
dcf.wisconsin.gov

TO: Chair Snyder, Vice-Chair Ramthun, and Honorable Members of the Assembly Committee on Children and Families

FROM: Amanda Merkwae, Legislative Advisor

DATE: March 24, 2021

SUBJECT: 2021 Assembly Bill 138

Thank you for the opportunity to testify about this legislation related to DCF programs and the children and families we serve. DCF is committed to the goal that all Wisconsin children and youth are safe and loved members of thriving families and communities. To support this goal, the Wisconsin child welfare system is guided by the following key principles:

- **Prevention:** Child welfare increasingly focuses on prevention efforts and keeping children in their homes when possible.
- **Reunification:** The primary goal is to reunify a child with their birth family whenever it is safe to do so.
- **Permanence**: The child welfare system aims to transition children in out-of-home care (OHC) safely and quickly back with their family, whenever possible, or to another permanent home.
- **Relatives:** Familiar, caring adult relatives play an important part in children's lives as caregivers or ongoing supports and should be used as out-of-home placements whenever possible.

It is through this lens of these principles that the DCF reviewed Assembly Bill 138 and will be testifying for information regarding this legislation. AB138 allows a parent to submit an affidavit of a disclaimer to their parental rights to a child without appearing in court to terminate their parental rights. DCF supports efforts to create an avenue for voluntary termination of parental rights that could reduce complexities and uncertainties in the court process for adoptive parents and help birth parents avoid possible trauma from appearing in court while assuring that this significant decision is informed and free from coercion.

DCF appreciates the changes made in Senate Amendment 1 in the companion bill to AB138. It is vital that any statutory framework for an out-of-court affidavit process aligns with the Indian Child Welfare Act (ICWA), the Wisconsin Indian Child Welfare Act (WICWA), and the language in the ICWA Regulations issued by the U.S. Department of Interior in 2016 that requires state courts to ask each case participant in a proceeding whether they know or have reason to know the child is an Indian child. Due to the significance of the decision to disclaim parental rights, DCF supports an expansion of the timeframe in which a birth parent may withdraw the affidavit for any reason from 24 to 72 hours.

An outstanding concern is the application of the out-of-court affidavit process in cases involving a minor parent. Minors, as we know from adolescent brain development research, may be less aware of the full ramifications of a monumental decision to voluntarily terminate parental rights and are particularly vulnerable to coercion or misinformation. DCF recognizes the requirement that a guardian ad litem (GAL) be appointed for minor parents interested in utilizing the out-of-court affidavit process and that minors be offered legal counseling. However, "legal counseling" is not defined under the bill. Further, a GAL's obligation would be to represent the "best interests" of the minor parent, but a GAL is not bound by the expressed wishes of the minor parent.

In recognition of the magnitude of the decision, DCF believes the rights of a minor in an out-of-court disclaimer process could be strengthened by the appointment of counsel. For example, there could be a circumstance where a minor parent wishes to go through with voluntary termination of parental rights through the out-of-court affidavit process, but the GAL does not believe it would be in the minor's best interests. As another example, a GAL may determine that the disclaimer of parental rights is in a minor parent's best interests, but a minor parent who may be unduly influenced by the wishes of other parties involved may not feel comfortable expressing hesitation with or opposition to the disclaimer process without an attorney appointed to represent those expressed wishes.

Thank you again for the opportunity to testify on this legislation. We are happy to answer any questions.

HO-CHUNK NATION LEGISLATURE
Governing Body of the Ho-Chunk Nation

Representative Patrick Snyder, Committee Chair
Wisconsin Committee on Children and Families

RE: Ho-Chunk Nation's Comments in Opposition to AB-138

March 24, 2021

Dear Chairman Snyder:

On behalf of the Ho-Chunk Nation, thank you Rep. Snyder for this opportunity to provide written comments to the Wisconsin Committee on Children and Families on AB-138 (relating to a disclaimer of parental rights and payments allowed in connection with an adoption).

Once again, the Ho-Chunk Nation must engage the State of Wisconsin in a government-to-government manner to protect the very core of its well-being, its children. Indigenous children worldwide have been ripped from their families, bought and sold, kidnapped and bleached of their beautiful traditional cultures, time and time again, under various state and federal policies. Those very children tend to come back to their indigenous homelands, limping and lost, seeking to be reunited with their tribal families and communities, and loved unconditionally. Our tribal communities must then work to heal the trauma of the separation. We refer to these tactics as old regimes of termination and cultural genocide, and these policies still maintain a ripple effect in our present condition. It must stop.

The Indian Child Welfare Act (the "ICWA") is to ensure "the placement of children in foster or adoptive homes or institutions which will reflect the unique values of the Indian culture."[1] Specifically, the ICWA requires that an adoptive placement is preferred to be **with members of the child's extended family, other members of the same tribe, or other Indian families** is "[t]he most important substantive requirement imposed on the state [emphasis added]."[2] The ICWA permits Tribes that desire to have a different, more culturally appropriate order of preferences to adopt such preferences to take the place of the standard placement scheme found in the ICWA.[3] Applicable here, Congress recognized that "white middle-class standards" are

[1] H.R. Rep. No. 95-608, 95th Cong. 2nd Sess. 8 (1978); *see also* 25 U.S.C. § 1902.
[2] *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 36 (1989).
[3] 25 U.S.C. § 1915(c).

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discriminatory standards that should not be used as they work against the qualification of indigenous homes.[4] Congress recognized that tribes maintain their own standards through social and cultural components, such as kinship and clan structure, and that States should look to these prevailing standards of the Indian community.[5] The Ho-Chunk Nation has twelve (12) traditional clans and an inclusive kinship structure that is pronounced in our community's suitable home standards and practices. We employ a robust set of codes to safeguard our children, including the HOCAK NATION CHILDREN AND FAMILY ACT.[6] Wisconsin is also committed to prevent out-of-home placement and to reunify indigenous children with the Indian family under the state version of the ICWA, the Wisconsin Indian Child Welfare Act (the "WICWA").[7]

We understand that the intent behind AB-138 is to minimize the trauma of parents wanting to engage in a voluntary disclaimer of rights and minimize the adoptive parent's concerns for finality of the same. Eliminating a Termination of Parental Rights (TPR) hearing is most problematic. The adversarial process in court allows the judge to hear information on both sides of the question if placement is in the child's best interests and provides an opportunity for the judge to probe whether the child is, in fact, an Indian child. The affidavit process under the bill opens the floodgates for fraudulent claims that would and often does get resolved before a qualified judge. In other words, AB-138 allows for a backdoor approach by exploiting the process to avoid the ICWA/WICWA altogether.

This bill is unacceptable.

Further, while we might appreciate the bill's inclusion of an appointment of a guardian ad litem (GAL) into the process, the scope of "legal counseling" is too vague and unclear in terms of what it means in practice and how it aids the decision-making process. Any legal counseling must include counsel on all ramifications of a child being removed from the specific tribal community. The GAL must be qualified to counsel in this regard.

AB-138 and the companion bill SB-29 as currently written will fast-track the separation of indigenous children from their tribal families and tribal communities. The Ho-Chunk Nation hereby requests a "No" vote on AB-138.

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4 H.R. Rep. No. 95-608, 95th Cong. 2nd Sess. 11 (1978).
5 25 U.S.C. § 1915(d).
6 The Hocak Nation Children and Family Act is available at: https://ho-chunknation.com/wp-content/uploads/2019/10/4HCC3-Children-and-Family-Act.pdf.
7 *See*: https://dcf.wisconsin.gov/wicwa.

HO-CHUNK NATION LEGISLATURE
Governing Body of the Ho-Chunk Nation

AB-138 violates both the application and purposes of ICWA and the WICWA, as well as the Ho-Chunk Nation's various laws, traditions and customs for placing and protecting our children. The bill takes away our ability to protect our families, takes away our discretion, and constitutes an attack on our sovereignty and our identity.

Again, we thank you for the opportunity to provide our written comments and formal objection to AB-138. Should the Committee proceed with any action or discussion on AB-138, the Ho-Chunk Nation requests to be included.

Respectfully,

Hinu Smith, District 1 Representative
Ho-Chunk Nation

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In Support of 2021 Assembly Bill 138

Cody Foss & Jillian Camara-Foss
1801 Fieldcrest Drive,
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jmcfoss@yahoo.com

Thank you for welcoming us back to the Capitol to allow us to testify in support of Assembly Bill 138. Some of you may remember our heartbreaking story that we first publicly shared in support of what was then Assembly Bill 263. For those of you who missed it, we would like to share with you our story of a disrupted adoption which was, in part, a direct result of what many believe to be Wisconsin's unreasonable adoption laws, specifically the termination of parental rights (TPR) process.

In December of 2017, our Wisconsin adoption agency contacted us stating that a pregnant mother was interested in us to adopt her baby. As luck would have it, the baby was born the very next day. We met the birthmother in the hospital at which point she decided that she wanted us to adopt her baby girl. At this time, we were informed that the biological father was unknown. Our adoption agency and the birthmother signed a Voluntary Placement Agreement and Medical Consent and Authorization forms. Two days later, we brought our daughter home from the hospital and made the very quick transition into being a family of three.

In the following months, our adoption agency made repeated attempts to determine the identity of the biological father but no man came forward. During this time, the birthmother resumed using illicit substances and was in and out of police custody. It became difficult to reach her as she did not want to go to court for TPR, but stated that she still wanted to proceed with the adoption plan. In February of 2018, our adoption agency was finally able to have a meeting with the birthmother to discuss TPR proceedings and schedule a court date. It was at this meeting the birthmother named an alleged biological father. In the following months, it was proven through DNA that this man was in fact the biological father. We then learned that the birthmother had known all along who he was but withheld his identity as he had been abusive towards her and is a longtime criminal offender, to include multiple convictions for sexual abuse of children. The birthmother stated that she had informed him of her pregnancy in an attempt to gain money for an abortion, which he refused to give her. He never followed up with her regarding the status of her pregnancy, nor did he contact her around the time of her due date.

In May of 2018, Green Lake County took control over our daughter's case and our adoption agency was pushed aside. We were now considered foster parents, with the permanency goal still being adoption. The court imposed several conditions for the biological father to meet prior to beginning supervised visitations. Despite his failure to meet many of the conditions, in September of 2018, he was granted his first visit with our then nine month old daughter. This visit soon turned into us driving 40 minutes away, two to three times per week, for our daughter to scream and cry at supervised visits with her biological father. Not only that, but we were instructed to help teach this man how to properly care for a baby as he was completely oblivious.

In December of 2018, Green Lake County Family Court decided to proceed with unsupervised weekend visitation and a trial reunification to begin in February of 2019. We were shocked at this decision and absolutely devastated. Following the fourth and final weekend visit, our daughter was returned to us with petechiae (burst blood vessels) on her throat and face and with an unexplained bruise on her lower cheek. We took her to the emergency room where an examination was conducted and a CPS report filed with Outagamie County for suspicion of child abuse. As instructed by the emergency room, we followed up by bringing her to her Pediatrician and then to the Children's Advocacy Center, both of whom agreed with the suspicion of child abuse during her biological father's unsupervised weekend visit. Despite all of this, Green Lake County screened out the CPS reports and decided to proceed with the trial reunification as planned.

On February 1st, 2019, the social workers arrived at our home. They carried our then fourteen month old daughter's unicorn suitcase and flowered tote-bags out to their car. We brought her outside, told her how much we love her and placed her in the car seat. She was screaming "mama" and reaching for us as the social worker closed the car door. Her cries for comfort, that we could no longer provide her, will haunt us for the rest of our lives.

Green Lake County told us that a court hearing and probable jury trial would be scheduled for sometime in May of 2019. Although our lawyer called repeatedly, we never received a notice. Due to an alleged mistake by the clerk of courts, we, our lawyer, and even the Guardian ad Litem never received notice and therefore were not in attendance at what was the final hearing. The case was closed on June 13th, 2019 and that very same evening, the biological father was arrested and charged with several misdemeanors and a felony for crimes committed with our little girl in the backseat of his car. As you can imagine, we are in constant fear for her safety. To this day, we are unsure of her whereabouts and unlikely to ever know if she is happy, healthy, or properly cared for.

Losing our daughter was undoubtedly the most painful experience of our lives, but was also heartbreaking for our families, friends, coworkers, and neighbors. Nearly every person that learned of our story was flabbergasted as to how such a tragedy could legally occur. It has been exhausting for us having to repeatedly justify our loss because Wisconsin's "Family First" mentality permits family unification and/or reunification based almost entirely on biology. Each of us has a duty to protect and preserve our future generations and we believe that Wisconsin has significantly fallen short when it comes to considering the best interests of the child.

Although we will never stop grieving for our first daughter and the life we had envisioned for her, we have since welcomed another baby girl into our family through adoption, but under extremely different circumstances. Understandably, we were terrified to attempt another adoption in Wisconsin. This led us to hire an adoption consultant who shared our profile with dozens of agencies across the country, but only in states that were considered "adoption friendly". This means that under most circumstances, TPR is legally and irrevocably completed between 24 and 96 hours after the baby's birth. Further, because of the in-depth legal preplanning and birth parent counseling and education, these states do not require a birth family to appear in court to complete the TPR proceedings. This can be hugely empowering to the birth family because it eliminates most scheduling conflicts, the fear that some individuals have of arrest for unrelated crimes or warrants, and the shame that many birth families endure while publicly declaring their voluntary termination of parental rights.

Although it will never change our story, we are testifying in support of Assembly Bill 138 in honor of our first daughter. If this bill was already in place, we would have likely finalized her adoption. There are several variables, but it is possible that her birthmother could have discussed with the biological father terminating his rights on the day that she requested money from him for an abortion. She also could have signed the TPR documents in private, sooner after giving birth, thereby eliminating her fear of appearing in court due to longstanding legal troubles. These are not radical concepts to accept and they do not come close to proceedings allowed by "adoption friendly" states. The proposed bill would only make for a slightly smoother transition of parental rights in infant adoptions. We sincerely hope that our heartache may help enact legislation to prevent a similar situation from happening to any other child and their adoptive family. Please consider the best interests of Wisconsin's children and these types of scenarios as you decide on how to vote for the proposed bill. Thank you.

Respectfully Submitted,

Cody Foss

Cody Foss

Jillian Camara-Foss

Jillian Camara-Foss

February 22,2021
Re: SB 29

Written Testimony on behalf of Senate Bill 29 from Brian & Addie Teeters, Appleton, Wisconsin

To the distinguished Committee Members:

We are grateful for the opportunity to submit our written testimony today on behalf of Senate Bill 29.

Our story with the Wisconsin adoption system began in early 2009. Our desire to adopt in the state of Wisconsin was significant. We had goals of working to support children in our home state, and had the desire for an open adoption with our child's biological family (which has proven to significantly benefit the mental health of adopted children). We worked with a reputable adoption agency in Wisconsin and completed all the necessary education and home study requirements.

Just a few short months after completing the process, we received a call from Milwaukee that would change our lives. A four-day-old infant girl had been born at Children's Hospital of Wisconsin. Her mother had chosen to place her child for adoption, looked through several profiles while in the hospital, and had chosen us to parent her child. If we accepted the case we could bring the baby home the very next day. We of course accepted the opportunity, and the next day we brought home our first child, our amazing little girl.

Just more than thirty days after she was placed with us, our daughter's first mother was scheduled to appear in court to terminate her parental rights. Our daughter was the result of a sexual assault, and the birth father was not present. Our daughter's first mother was still very traumatized by the assault, and while she began the court hearing and the appropriate process, became very stressed by the courtroom environment and the judge made the determination to postpone the hearing, for an additional thirty days. Then after 60 days, our daughter's first mother was still not prepared to complete the hearing process, and again, court was postponed. The third and final hearing took place as our daughter was turning three months old. At this hearing, her first mother exclaimed that she wanted to try parenting. Therefore, after three months of parenting our child, we lost her the very next day following the third and final court hearing.

We were devastated and as a result, transferred our file to the state of Texas, and had a successful adoption with our son, and saw a process in the state of Texas that fostered such respect towards birth parents that it helped in-turn foster a beautiful open adoption with our son's first family to this very day.

Our key learnings and request for consideration include:

1. Allowing birth parents the option to terminate parental rights outside of the courtroom and in a shorter period of time. We are not treating Wisconsin's first parents with the respect they deserve. Allowing this alternative is providing first parents with the options they deserve.
2. Helping to strengthen Wisconsin's adoption process so more prospective adoptive parents stay in-state to adopt children, therefore creating more open adoptions between birth parents and children.

Ultimately we are hopeful that enacting this legislation will support the full adoption triad of adopted child, birth parent, and adoptive parents and foster more successful relationships and adoptions in the State of Wisconsin in the future.

Thank you for your consideration.

I am writing to you first as an adoptive mom myself, and second as an Assistant District Attorney who has seen the devastating effects our current adoption laws in Wisconsin has on adoptive families.

My own personal story of adoption starts with trying to find an adoption agency in Northwestern WI. My husband and I had to eventually go down to the Twin Cities as there was not an agency to serve us here. Knowing about Wisconsin adoption laws I knew that we wouldn't adopt a child from this state for a number of reasons, mainly because the wait time for a birthparent to revoke consent is both harmful to themselves and their child. The emotional limbo we are subjecting all parties of the adoption triangle (birthparents, child and adoptive family) to is extremely detrimental and contrary to everyone's best interest, particularly the child.

We recently had a case where an adoptive family took placement of a newborn baby girl born here in our area. They had previously worked with an adoption agency who facilitated placement. The circumstances surrounding the birth father of the case initiated involvement by Child Protection Services. Our office and other agencies tried to work in conjunction with this adoptive family so as not to disrupt the placement of this adoption. The young mother was eventually cajoled by birthfather's family to revoke consent. My guess is they thought if she revoked consent future criminal charges would not be filled against birth dad. This young mother and child now have an open Child Protection case. Understandably the adoptive family was devastated after caring for this infant for over 30 days. This is only one story of many in our corner of the state where the liberal application of Wisconsin adoption laws has hurt multiple parties.

I thank you for writing this bill (which seems to be the norm in a myriad of other states, like Florida where we adopted from) and wish you the best of luck in getting this bill passed through the houses.

Erica Ellenwood
St. Croix County

Our state laws regarding private adoption need serious reform. I have been a personal witness to the beautiful and downright ugly parts the current process brings to families waiting with open arms to welcome a child into their hearts. Making adoptive parents wait days, weeks and sometimes even months before the birth parents sign off on their parental rights is torturous. In my experience, I have seen these adoptive families being torn between living in excitement and love, and crippling fear every time the phone rings. Current Wisconsin law drives prospective adoptive parents to explore other states and countries, leaving Wisconsin children either lost in the system, or getting bounced between environments that lack the stability and love children deserve.

I have also been witness to the humiliation and fear birth mothers feel when she must be present in front of a judge, in a large room, providing details regarding why she is opting to terminate her parental rights. The current process is neither conducive to establishing Wisconsin families, nor does it provide dignity and closure for the birth parents.

I support this legislation for several reasons – the main of which is providing an option to reduce the waiting time to voluntarily disclaim parental rights, as well as reducing the court time for adoptive parents to complete the process through the use of counselors and the affidavit of disclaimer of parental rights. These two points alone will allow for more Wisconsin children to be welcomed into loving homes more quickly.

Stefani Sielaff
Brown County

Unfortunately, many young women find themselves pregnant with no reasonable means of support or maturity to raise a child. I was one of those children. In fact my birthmother died just two days ago. Even meeting her many years later, I am so thankful she and her parents made the decision to give me up for adoption. I don't feel my life would have been the same in any way, shape or form if I had been raised by her. She made the best decision for me, her baby.

In these "tugs of war" sometimes people forget the most important issue. The BABY. This is all about the BABY and what is best for her.

Diane McConnell
Brown County

Almost all of the people we know that have adopted have gone out of state because Wisconsin is one of the worst/hardest states to adopt in, in the entire country.

Paul & Darci Kluesner
Dane County

The current time frame for a parent to change their mind is not good for anybody involved. A kid needs stability, and for them to finally recognize the adoptive family as their parents and then be torn apart from them and go to somebody they consider a stranger isn't good for them. A parent putting their kid up for adoption is doing it because they know their kid deserves a better life than they can provide. As time goes on, they can start to doubt their decision, and over 30 days to cope with your decision is unfair to them when their gut instinct was the correct one for the benefit of their kid. As for the adoptive parents, spending over 30 days worried that it will fall through is the most anxious time of your life. And then having spent more than a month bonding with and loving this child that you believe is your kid, only to have them taken away from you is a pain that can't be put in words.

Nikki Larmee
Dane County

LAC COURTE OREILLES
TRIBAL GOVERNING BOARD
Pride of the Ojibwe

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March 23, 2021

Representative Snyder, Chair
Committee on Children and Families
Room, 307 North Wisconsin State Capitol
Madison, WI 53708

Re: Comments in Opposition to AB 138 and Neutral Stance on AB 26 (Support if ICWA/WICWA Amendments Made)

Dear Chair Snyder:

We thank you and the Assembly Committee on Children and Families for allowing the Lac Courte Oreilles Band of Lake Superior Chippewa Indians the opportunity to submit written comments on these two bills that will greatly affect the Tribe.

One of the paramount purposes of the Indian Child Welfare Act (hereinafter ICWA) is to ensure "the placement of [ ] children in foster or adoptive homes or institutions which will reflect the unique values of the Indian culture."[1] The ICWA's mandate that an adoptive placement is preferred to be with members of the child's extended family, other members of the same tribe, or other Indian families is "[t]he most important substantive requirement imposed on the state."[2] Further, the ICWA permits Tribes that desire to have a different, more culturally appropriate order of preferences to adopt such preferences to take the place of the standard placement scheme found in the ICWA.[3]

It was the intent of Congress to ensure that "white, middle-class standards" not be utilized in determining whether preferred placements are suitable.[4] "Discriminatory standards have made it virtually impossible for most Indian couples to qualify as foster or adoptive parents, since they are based on middle-class values."[5]

> 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

[1] H.R. Rep. No. 95-608, 95th Cong. 2nd Sess. 8 (1978); *see also* 25 U.S.C. § 1902.
[2] *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 36 (1989).
[3] 25 U.S.C. § 1915(c).
[4] H.R. Rep. No. 95-1386, 95th Cong. 2nd Sess. 24 (1978).
[5] H.R. Rep. No. 95-608, 95th Cong. 2nd Sess. 11 (1978).

"there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children."[6]

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."[7] 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.

AB 26 –Neutral on Assembly Substitute Amendment 1

- **Support if cross-references to the best interests of Indian children/juveniles are added.[8]**

The Lac Courte Oreilles Band of Lake Superior Chippewa Indians would be able to support this Substitute Amendment if it were to mirror the Senate Amendment 1, to Senate Substitute Amendment 1, to Senate Bill 24 offered by Senator Jacque on March 2, 2021. That Senate Amendment is included below for quick reference.

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[6] 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).

[7] 25 U.S.C. § 1915(d).

[8] Wis. Stat. 48.01(2):

(2) In Indian child custody proceedings, the best interests of the Indian child shall be determined in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and the policy specified in this subsection. It is the policy of this state for courts and agencies responsible for child welfare to do all of the following:

(a) Cooperate fully with Indian tribes in order to ensure that the federal Indian Child Welfare Act is enforced in this state.

(b) Protect the best interests of Indian children and promote the stability and security of Indian tribes and families by doing all of the following:

1. Establishing minimum standards for the removal of Indian children from their families and placing those children in out-of-home care placements, preadoptive placements, or adoptive placements that will reflect the unique value of Indian culture.

48.01(2)(b)2.2. Using practices, in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, this section, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian children and, when an out-of-home care placement, adoptive placement, or preadoptive placement is necessary, placing an Indian child in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community.

Wis. Stat. 938.01(3):

(3) Indian juvenile welfare; declaration of policy. In Indian juvenile custody proceedings, the best interests of the Indian juvenile shall be determined in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and the policy specified in this subsection. It is the policy of this state for courts and agencies responsible for juvenile welfare to do all of the following:

(a) Cooperate fully with Indian tribes in order to ensure that the federal Indian Child Welfare Act is enforced in this state.

(b) Protect the best interests of Indian juveniles and promote the stability and security of Indian tribes and families by doing all of the following:

1. Establishing minimum standards for the removal of Indian juveniles from their families and the placement of those juveniles in out-of-home care placements that will reflect the unique value of Indian culture.

2. Using practices, in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, this section, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian juveniles and, when an out-of-home care placement is necessary, placing an Indian juvenile in a placement that reflects the unique values of the Indian juvenile's tribal culture and that is best able to assist the Indian juvenile in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian juvenile's tribe and tribal community.

SENATE AMENDMENT 1,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 24

March 2, 2021 - Offered by Senator JACQUE.

At the locations indicated, amend the substitute amendment as follows:

1. Page 2, line 7: after "child" insert " or, in the case of an Indian child, the best interests of the Indian child as described in s. 48.01 (2)".

2. Page 3, line 16: after "child" insert "or, in the case of an Indian child, the best interests of the Indian child as described in s. 48.01 (2)".

3. Page 4, line 23: delete "child" and substitute " juvenile or, in the case of an Indian juvenile, the best interests of the Indian juvenile as described in s. 938.01 (3)".

4. Page 5, line 18: after "juvenile" insert " or, in the case of an Indian juvenile, the best interests of the Indian juvenile as described in s. 938.01 (3)".

By having the offenses under Ch.948 removed from AB 26, with the exception of the crimes listed below, it addresses the concerns we all have regarding unsafe placements, but also LCO's concerns that the blanket approach would prevent potentially suitable placements from being considered.

- 948.02(1) or (2)- sex assault of a child
- 948.025- repeated sex assault of a child
- 948.03(2) or (5)(a) 1, 2, 3, 4- child abuse, causing intentional harm, repeated physical abuse of same child
- 948.05- sexual exploitation of a child
- 948.051- trafficking
- 948.055- causing child to view/listen to sexual activity
- 948.06- incest
- 948.07- child incitement
- 948.08- soliciting child for prostitution
- 948.081- patronizing a child
- 948.085- sex assault of child placed in substitute care
- 948.11(2)(a) or (am)- exposing a child to harmful material
- 948.12- possession of child pornography
- 948.13- child sex offender working with children
- 948.21- neglecting a child
- 948.215- chronic neglect
- 948.30- abduction of a child
- 948.53- child unattended in childcare vehicle

The best interest of an Indian child/juvenile is that the Indian Child Welfare Act/Wisconsin Indian Child Welfare Act are followed- which includes ensuring that placements reflect the unique of the Indian child's/juvenile's tribal culture. This cannot be lost in any discussion involving placement. As such, we believe it is relevant to address at this time.

AB 138- Oppose

- **Without having parents at a hearing, it allows for ICWA/WICWA avoidance.**

Disclaiming parental rights via written affidavit fails to meet the federal standard as set forth in 25 C.F.R. §23.107, and thus the federal regulation would preempt this proposed legislation. The regulation creates an affirmative duty to ask the parties during a voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is Indian. Beyond that, it establishes how one goes about fulfilling that duty. This standard and the process set forth in regulation warrants more than the drafted language with preliminary draft amendments.

25 C.F.R. § 23.107 How should a State court determine if there is reason to know the child is an Indian child?

(a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(b) If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an "Indian child," the court must:

(1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and

(2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an "Indian child" in this part.

(c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;

(2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(5) The court is informed that the child is or has been a ward of a Tribal court; or

(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

(d) In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an "Indian child." A Tribe receiving information related to this inquiry must keep documents and information confidential.

By having the parents at a court hearing, it allows the Judge to ask the appropriate questions to be able to truly determine whether the court "knows or has reason to know" a child is an Indian child. It is far easier to perpetuate a lie when it comes down to simply checking the box that a child is not Indian. However, when a parent is before a Judge who can fully explain the consequences of lying on

the record and who can ask more detailed and open-ended questions, it allows for a greater level of honesty and ICWA/WICWA compliance.

Disclaiming parental rights solely through affidavit should give everyone pause- not just Tribal folks. The opportunity for abuse and duress is at times far greater than those may be willing to admit. This is always true of women within the days after giving birth, when fluctuating hormones affect cognitive functioning. There are not enough protections within the bill to account for private agency or public agency abuse.

The use of written affidavit alone to disclaim parental rights can be used as a tool for avoidance of ICWA/WICWA in not only voluntary actions, but also in involuntary actions. Perhaps some may argue that stronger language and better cross-referencing could save this bill. Even then, we believe this legislation still lays the groundwork for ICWA/WICWA avoidance. For a number of years, protective plans were utilized by county agencies as a tool to avoid ICWA/WICWA. The contributing factor that allowed for these to be abused was the fact that they are tools used outside of the courtroom processes. We fear that these affidavits could be used in the same manner- as a loophole.

In summation, we have numerous concerns regarding AB 138:

- Affidavits being used as an ICWA/WICWA avoidance tool;
- Federal preemption concerns for failing to set forth a procedural system that adequately follows 25 C.F.R. § 23.107;
- Equal protection under the law with regards to procedural differences between mothers and alleged fathers;
- Legal concerns over non-marital alleged fathers disclaiming rights to which they do not possess until paternity is acknowledged or adjudicated after birth of a child; and
- Lack of procedural clarity on the how the affidavit plays into the normal termination of parental rights and adoption court processes.

It is our recommendation that the authors consider holding a stakeholder Zoom call to assist in identifying ways to address the concerns that led to the bill being drafted, *but* in a manner that will not run afoul of ICWA/WICWA, equal protection, and child welfare best practice. We simply do not believe that termination of parental rights by Affidavit alone is the appropriate tool.

We thank you for the opportunity to provide written comment on these two bills. Please accept this as our neutrality on AB 26, again with the ability to be supportive with the addition of best interests of an Indian child/juvenile language, and opposition to AB 138. Should further discussion be sought we would welcome a seat at the table for that purpose.

Sincerely,

Louis Taylor, Chairman
Lac Courte Oreilles Tribal Governing Board

MENOMINEE INDIAN TRIBE OF WISCONSIN

P.O. Box 910
Keshena, WI 54135-0910

To: Rep. Pat Snyder, Chair
Members of Assembly Committee on Children and Families
From: Gunnar Peters, Chairman, Menominee Tribal Legislature, Menominee Indian Tribe
Date: Tuesday, March 23, 2021
Re: Comments Regarding 2021 Assembly Bill 26 and Assembly Bill 138

The Menominee Tribe appreciates the opportunity to submit comments on two bills significant to our Menominee Tribe, our Menominee children, and our Menominee families. Menominee Tribe expresses to the Committee the need to keep in mind the provisions of ICWA and WICWA and ensure the voices of the Tribes are heard throughout, so we can avoid any changes in procedures or laws related to placement, termination of parental rights or adoption that will negatively impact American Indian children, parents, and Tribes and their rights under ICWA. Under WICWA, Wisconsin is committed to prevent out-of-home placement to reunify Tribal children with the American Indian family. Our Menominee Tribe maintains a robust Children's Codes to assure the safety of our children.

Related to Assembly Bill 26, The Menominee Tribe had concerns with the original bill but Assembly Substitute Amendment 1 addresses some concerns. We will stand neutral on the bill, and with support if the same ICWA best interests language of Senate is adopted.

Menominee Tribe wants to express our concern related to the bill that it may disproportionately impact our American Indian children and families by precluding some Tribal relatives or Tribal people due to crimes that would not be considered dangerous to those caring for children, hence decreasing available tribal family placements and forcing family separation and resulting in children and family trauma. The bill will also increase obstacles to placing American Indian children with family members and tribal members who meet the placement preferences under ICWA and WICWA.

Related to Assembly Bill 138, which would allow a parent to submit an affidavit of a disclaimer to their parental rights to a child without appearing in court to terminate their parental rights. Menominee Tribe opposes Assembly Bill 29.

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Menominee Tribe is concerned the language in the bill related to Indian children is inconsistent with the ICWA/WICWA. Eliminating a Termination of Parental Rights hearing is most problematic. This bill allows a process to avoid ICWA/WISCSA.

Throughout the entire package of adoption bills that have been brought forth, the Menominee Tribe maintains its deepest concern that there is no provision to have a father legally identified prior to a process as monumental as a termination of parental rights and subsequent adoption of a child. Alleged or presumed fathers do not provide the Tribe comfort in achieving the purposes of ICWA and WICWA.

How does a non-legally identified father have the ability to legally terminate rights? Foundationally, that concept is flawed. DNA is now used in almost all aspects of our lives. Why would the State not use it for the identification of a father in a child's life? Exceptions are always noted.

The unintended consequences are significant for Tribes. Without a legally identified father and judicial oversight, the ability for a child to be properly identified as Indian is significantly reduced or next to impossible. Over the course of time, that lack of protection inherently reduces tribal membership. But even greater, removes a child from his/her true identity with all the rights and responsibilities of being a tribal member.

Some more logistical concerns include;

1. The ability of an alleged or presumed father terminate parental rights prior to birth, while the mother is unable to until after birth. If alleged father terminates and mother decides not to, who becomes responsible for that child. There is no one to step into that role. Public policy has spent significant resources to have the father in that role and now it can be abdicated prior to birth.

2. The vague question of that the child is not an Indian child within the affidavit.

Possible solutions to these concerns would include:

1. In order for an affidavit of an alleged or presumed father to be accepted; the party must submit to a DNA swab which would be used for genetic testing upon the birth of the child.

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2. Both mother and father would have the same timeframes in which to execute these affidavits. Mother would have to consent the child's genetic testing.

3. The affidavit would have to inquire on a more basic level of whether this is an Indian child (ex. Are you or any family member an enrolled member of a Tribe? Are aware of any native heritage in your family or the other parent's).

Obviously, these concerns and suggestions cannot address every hypothetical, but would significantly reduce them. The Tribe understands that there may be some logistical hurdles like administering and storage of DNA results, costs, and systemic workflow. However, the small upfront costs outweigh long term costs to parents, adoption resources, Tribes, and most importantly, the child.

Due to the magnitude and breath of this issue for the Tribe it is difficult to convey our concerns in these written comments alone. If any of you have any specific questions, we would be interested in discussing with you.

This letter provides Menominee Tribe's neutral stance to Assembly Bill 26 and formal objection to Assembly Bill 138 as written.

Thank you for your time and attention to this matter.