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NEUTRAL

**TESTIMONY BEFORE HOUSE COMMITTEE ON CHILD WELFARE AND FOSTER CARE
HB 2024**

Dear Chairperson Concannon and Members of the Committee:

My name is Russell Brien and I am outside counsel to several federally recognized Indian tribes, including the Prairie Band Potawatomi Nation and the Iowa Tribe of Kansas and Nebraska. We have concerns that K.S.A. 38-2282, in its present form and as it would be amended by HB 2024, may frustrate the purposes of the federal Indian Child Welfare Act, 25 U.S.C. §1901 *et seq.* (“ICWA”). In passing ICWA, the intent of Congress was to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.” 25 USC 1902.

ICWA applies to specified state child custody proceedings involving an Indian child who is a member of, or eligible for membership in, a federally recognized Indian tribe. Child custody proceedings covered by ICWA include foster care placement, termination of parental rights, and adoptions. Under ICWA, the child’s tribe and family have rights to be involved. In particular, ICWA requires that the child’s tribe have the right to intervene and be involved in any case involving foster or temporary placement, guardianships, and adoptive placements. In child custody proceedings involving Indian children, ICWA requires (i) that active efforts be made to preserve the Indian family, (ii) identification of placements that fit under the ICWA preference provisions, and (iii) notice of any child custody proceedings to the child’s tribe and parents of the child. The first step in all of this is identifying whether a child is an Indian child.

We note that K.S.A. 38-2282 is made part of the Kansas Code for the Care of Children (the “Code”). K.S.A. 38-2201. However, unlike many other provisions of the Code, Section 38-2282 is not expressly made subject to the requirements of ICWA. K.S.A. 38-2203(a). Section 38-2282 in its current form makes it unlikely that sufficient information will be available to determine whether the relinquished child may be an Indian child covered by ICWA. The lack of human interaction resulting from the proposed amendments will only compound this problem.

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We suggest additional amendments to HB 2024 that would include targeted inquiry and notice provisions in K.S.A. 38-2282 meant to facilitate compliance with ICWA. We are happy to proposed suggested language for consideration by the committee.

Please feel free to contact me (913.205.7513), Brad Smoot (785.233.0016), Legislative Counsel for the Prairie Band Potawatomi Nation, or Larrie Ann Brown (785.640.2747), Legislative Counsel for the Iowa Tribe of Kansas and Nebraska, with any additional questions.

Respectfully submitted,

BRIEN LAW, LLC

/s/ Russell A. Brien