

Testimony of Professor Dan Lewerenz
In support of House Bill 1564
Monday, January 27, 2025

Chairman Ruby, Vice-Chairwoman Frelich, and members of the House Human Services Committee, thank you for this opportunity to testify in support of HB 1654. Representative Davis, thank you for the invitation. My name is Dan Lewerenz, and I am an Assistant Professor of Law and Director of the Indian Law & Tribal Law Certificate Program at the University of North Dakota School of Law and I teach the Law School's Indian Child Welfare Act course. I also am a member of the Iowa Tribe of Kansas and Nebraska, and I work with the North Dakota ICWA Best Practices Partnership, a joint Tribal-State-Private collaboration led by UND to improve Indian Child Welfare implementation and cooperation throughout the State. I say that only by manner of introduction, though; the opinions expressed in my testimony here today are my own, and do not necessarily represent the views of my employer, my Tribe, or the Partnership.

I urge you today to advance HB 1564, amending what I will refer to as the North Dakota Indian Child Welfare Act (or North Dakota ICWA), for two reasons. First, the North Dakota ICWA was necessary when enacted by this Legislature two years ago, and it remains vitally important today. Second, the proposed amendments in 1564 would make important improvements that will both clarify and streamline the existing law.

First, the North Dakota ICWA was, and still is, vitally important. This Legislature enacted the North Dakota ICWA at a time when the Federal Indian Child Welfare Act faced the existential threat of the *Brackeen* litigation. Fortunately, the U.S. Supreme Court held that the Federal ICWA did not exceed Congress's Indian Affairs power and did not commandeer the States.¹ That battle was won, but the war is not over. In fact, next week the Minnesota Supreme Court will hear argument in a new case, initiated by some of the same anti-ICWA activists behind *Brackeen*, once again challenging the constitutionality of ICWA.² This Legislature's enactment of the North Dakota ICWA two years ago sent a powerful message that this State stands side-by-side with Tribes, child welfare professionals, and the majority of other States in recognizing that ICWA embodies the gold standard in child welfare policy and practice. If this Committee advances and this Legislature ultimately enacts HB 1564, it will send an equally powerful message that North Dakota will not be cowed by radical activists and their extremist agenda.

Second, HB 1564 would make important improvements to the North Dakota ICWA. For starters, the bill corrects some drafting errors that inadvertently made their way into the original North Dakota ICWA. The current law, for example, accidentally covers an award of custody to one of the parents in a divorce proceeding, and HB 1564 would correct that error. In addition, HB 1564 would clarify some provisions that attorneys and social workers implementing the North Dakota ICWA have found confusing. For example, in an attempt to be comprehensive in describing the proceedings covered by the North Dakota ICWA, the current law makes reference "foster care or nonfoster care placement." But "nonfoster care placement" is not a term regularly used in child welfare practice in this State, and practitioners were unsure what that term was intended to cover. So HB 1564 would

¹ *Haaland v. Brackeen*, 599 U.S. 255 (2023).

² *In re Welfare of Children of L.K. and A.S.*, No. A24-1296 (Minn.).

delete that term. Also, Section 27-19.1-01(3) in the North Dakota IWCA concerns ordinary foster care proceedings, but contains confusing language that looks like it should apply instead to emergency proceedings. HB 1564 would restructure the North Dakota ICWA in a way that better clarifies which standards apply to which proceedings.

I will close by saying that no legislation, whether enacted or proposed, is perfect. Those of us who work on Indian Child Welfare in North Dakota continue to gather feedback both on the North Dakota ICWA as enacted in 2023 and on HB 1564, and we might still come to this body with further amendments. It is my opinion that those amendments would not change the substance of HB 1564 in any meaningful way, but instead would simply do more to clarify the law. But in any case, I think it is important that this Committee advance HB 1564 today so that North Dakota can continue to be a leader in Indian Child Welfare best practices.

I am happy to answer any questions the Committee has of me, whether today or in the future.

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