NWX-DEPT OF INTERIOR-NBC (US)

Moderator: Larry Roberts
May 12, 2015
12:00 pm CT

Coordinator: Welcome and thank you for standing by.

At this time all participants are in a listen-only mode until the question-and-answer session of today's conference. At that time you may press Star-1 on your touchtone phone to ask a question.

I would like to inform all parties that today's conference is being recorded. If you have any objections you may disconnect at this time.

I would now like to turn the conference over to Mr. Larry Roberts, Deputy Assistant Secretary of Indian Affairs.

Thank you. You may begin.

Larry Roberts: Thank you. Good afternoon, everyone. This is Larry Roberts. I'm the Principal Deputy Assistant Secretary for Indian Affairs. I want to start by thanking you all for joining us for this public meeting this afternoon.

We are going to run this public meeting as we run the public meetings - the in-person public meetings across the country. And so what we're planning on doing this afternoon is going through a short PowerPoint which you can find on www.bia.gov. There's a link on that Web site along the right hand side of the page that has Indian Child Welfare Act 2015. If you click on that link you will find the PowerPoint that we're going to be going through.

We expect the PowerPoint will probably take us about 20 minutes to get through and then we're going to open it up to comments from all of you.

A couple of things.

One is we have a number of participants on the line and so I would ask that everyone keep their initial comments to five minutes so that everyone who wants to provide a comment can do so. Once everyone has had an opportunity to provide a comment we will open it up for a second round of comments from folks.

And I wanted to share with everyone that we are also having a public meeting in Tulsa on Thursday of this week. And then, obviously, everyone is invited and welcome to submit written comments to the Department by May 19.

The other thing is, as you're thinking of the comments that you're going to provide on the rule I would ask that everyone, if you have suggestions for changes to text of the rule, that you provide that with specificity. That always helps us as we're looking at comments - general comments concerning various sections of the rule. We'll certainly consider those general comments, but it's always helpful for us to get specific comments on how the rule can be improved.

So with that I'm going to start things off by going around the room here so that everyone from the Department of Interior that is helping us can introduce themselves, and then we'll get started with the PowerPoint.

Sabrina McCarthy: Sabrina McCarthy, Solicitor's Office.

(Camilla Urban): (Camilla Urban), Solicitor's Office.

Debra Burton: Debra Burton, Social Worker for ICWA Policy Human Services, BIA.

Sarah Walters: Sarah Walters, Counselor to the Assistant Secretary for Indian Affairs.

Gina Jackson: Gina Jackson, Senior Fellow for the Assistant Secretary's Office of Indian Affairs.

(Rebecca Sistenchi): (Rebecca Sistenchi), Solicitor's Office.

Rodina Cave: Rodina Cave, Senior Policy Advisor to the Assistant Secretary for Indian Affairs.

Liz Appel: Liz Appel, Office of Regulatory Affairs & Collaborative Action.

Larry Roberts: Okay.

So, we'll get started with the PowerPoint. Again, bia.gov, there's a link to the ICWA and once you click on that link there's a PowerPoint there if you want to follow along.

So, by way of background Indian Child Welfare Act was - on 1978 Congress enacted ICWA to protect the best interest of Indian children and promote the

stability and the security of Indian tribes and families. ICWA establish minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes. And placement to reflect the unique values of Indian culture. And so it articulates a strong federal policy that, where possible, an Indian child should remain in the Indian community.

So in 1979 shortly after the passage of the act the Department issued guidelines for State Court implementation of ICWA and also issued regulations on ICWA notice. From 1979 to the present, State Courts has interpreted the Indian Child Welfare Act in a variety of ways.

And so in 2014 the Department held a number of listening sessions on the 1979 guidelines. And as part of those listening sessions we heard that - from tribes that the guidelines should be updated since they haven't been updated since 1979 and that the Department should consider issuing regulations to implement ICWA.

And so, also in 2014 the Attorney General's Advisory Committee on Children exposed the guidelines and also recommended that the Department look at ICWA guidelines and regulations.

So this year -- in February of this year -- we issued updated guidelines and then in March of this year we issued the Proposed Regulations that we're talking about today.

So the proposed rule issues - provide a number of both new and updated definitions for terms such as active efforts, custody, domicile, imminent physical danger or harm, voluntary placement, and then also revises several

other definitions. And so, again, we're always looking for comment and feedback in terms of how to improve the rule and those definitions.

The goal is - of the rule making is to promote consistent implementation of the Indian Child Welfare Act in all states. And so one of the things that the proposed rule addresses is the applicability of ICWA that it applies when there's an Indian child that is the subject of a child custody proceeding. Those proceedings can include status offenses and juvenile delinquency proceedings if placement or termination is possible.

The proposed rule also sets forth that there is no so-called existing Indian family exception. Again, trying to promote consistent implementation of ICWA across the states.

In terms of applicability the proposed rule would have agencies and state courts ask whether the child is an Indian child and if there's an early opportunity. And if there's any reason to believe that the child is an Indian child then that the agencies and state courts should treat that child as an Indian child unless and until it's determined that the child is not an Indian child.

In terms of voluntary placements the proposed rule would provide that ICWA applies is the parent consents to placement or termination and that ICWA does not apply is the parent or custodian may regain custody of the child upon demand.

The proposed rule also provide steps to contact a tribe to provide notice or to verify membership.

At this point I'm going to turn the presentation over to Rodina Cave to talk a little bit about the proposed rule revisions for pre-trial requirements.

Rodina Cave: Hi. So if you're following the PowerPoint I'm on Slide 8.

And so under the proposed rule there is a requirement to determine whether the child is an Indian and to meet that requirement agencies and state courts must ask if the child is an Indian child and if there is reason to believe that the child is an Indian child they must take certain steps. There's examples provided in the proposed rule for when an agency has reason to believe that a child is an Indian child.

Moving on to Slide 9. The proposed rule has provisions regarding in a voluntary proceeding that if a consenting parent wants anonymity then the agency or court must keep relevant documents under seal, but still provide notice and obtain verification from the tribe.

And that there is a requirement to begin to engage in active efforts. And so, when does this requirement start? It starts as soon as the case or an investigation may result in the placement of an Indian child outside of the custody of a parent or Indian custodian. And it applies while investigating whether a child is an Indian child.

Continuing onto Slide 10, designating the child's tribe. The proposed rule makes clear that only the tribe may determine whether a child is a member of that tribe or eligible for membership. There's also provisions regarding setting out the steps if the child is potentially a member of more than one tribe, the notifications, and filing the designation with the courts, and also the proposed rule provide that the state court must dismiss an action as soon as it determines it lacks jurisdiction. For instance when the tribal court has jurisdiction.

And moving on to Slide 11, the proposed rule provide when notice is required when an agency or court knows of or have reason to believe a child is an Indian child in any proceeding. The proposed rule provide what those proceedings include -- voluntary of involuntary proceedings, temporary custody proceedings -- and how notice is provided by registered mail with return receipt requested.

The proposed rule also has provisions regarding time limits. That not substantive proceedings, rulings, or decisions on (child's) placement or termination of parental rights may occur until notice and waiting periods have elapsed. And that proceeding may not begin until ten days after each parent or Indian custodian and tribe receives the notice, and that the parent or the tribe can ask for an additional 20 days.

If you move on to Slide 13 regarding emergency removal, the proposed rule has provisions regarding - providing that emergency removal must be as short as possible and that the agency or state court must document whether removal or placement is proper and continues to be necessary to prevent imminent physical damage or harm to the child. The court must promptly hold a hearing to evaluate whether continued removal or placement is necessary, and immediately terminate the placement or removal when the emergency has ended.

On Slide 14 -- Emergency Removal (continued) -- the agency must treat the child as an Indian until a contrary determination has been made, conduct active efforts to prevent the breakup of the Indian family as early as possible before removal if possible, take and document steps to confirm whether the child is an Indian child, notify the child's parents and Indian custodian and tribe of removal. And notify parents and custodians and the tribe about each proceeding and maintaining records.

Also on Slide 15 -- continuing with emergency removal -- at any court hearing on emergency removal or placement the court must decide the removal or placement is no longer necessary to prevent the imminent physical damage or harm to the child. And that temporary emergency custody should be less than 30 days unless there's a hearing with testimony from a qualified expert witness or extraordinary circumstances exist.

Emergency removal or placement must end as soon as the imminent physical damage or harm no longer exist or the tribe exercises jurisdiction over the case.

And to discuss the transfer to tribal court, Debra Burton will talk about that.

Debra Burton: Okay. Good afternoon.

The right to request transfer to tribal court, the proposed rule clarifies that this right exists with each proceeding and at any stage of the proceeding. Because in the past we've had some state court (unintelligible) they deny transfer to tribal court because they said it was too late in the proceeding and the new rule clarifies that that right exist at any stage of the proceeding.

The state court must transfer the case to tribal court unless either parent objects, tribal court declines, or the state court determines there is good cause to deny the transfer. Now, the rule specifies that the good cause basis must be stated on the record --any good cause that the state court finds not to transfer.

And the proposed rule stress out three factors that the state court may not consider when making the decision about this good cause to deny the transfer. The first factor is whether the case is at an advanced stage. The second one is

the child's contact with the tribe or reservation. And the third factor is the tribal court's prospective placement for the child.

Now the proposed rule stress out that there is a petition - the petition for - any petition for placement or termination of parental rights must demonstrate to the court that active efforts to avoid the need to remove the child were made and that active efforts were unsuccessful. And the proposed rule clarifies and specifies that any active efforts made must be documented in detail and that they must show that the social worker, the agency, and court attempted or did use the resources of the extended family, tribe, Indian social service agencies to the extent possible.

Now, the proposed rule clarifies what is and what is not clear and convincing evidence. Because as you may know the court may order foster care placement for an Indian child only if clear and convincing evidence exist, and that evidence is supported by the testimony of one or more qualified expert witnesses and that there must be a finding that continued custody with parent or Indian custodian is likely to result in serious physical damage or harm to the child.

And the court may order termination of parental rights only if evidence beyond reasonable doubt exists. Again, supported by the testimony of one or more qualified expert witnesses and that there must be a finding of serious physical damage or harm or risk of in order for the child to be removed.

And, again, change is that the rule clarifies what is and what is not clear and convincing evidence.

The proposed rule sets out four categories of qualified expert witnesses. And the categories are put in a descending order of preference.

So that the first category is the most preferred type of qualified expert witness that should be used and that is a member of the child's tribe who is recognized by the tribal community as knowledgeable in tribal customs of family organization and childrearing.

The second preferred category of qualified expert witness is a member of another tribe who is recognized by the child's tribe as an expert on the knowledge of child and family services to Indians and the tribe.

The third preferred qualified expert witness is a layperson who is recognized as having substantial experience in delivering child and family service to Indians and people and knowledge of social and cultural standards in the child's tribe.

And the fourth and least preferred qualified expert witness category is a professional who has education experience who can demonstrate knowledge of prevailing social and cultural standards of childrearing practices within the tribe.

And now I'm going to turn it over to Gina Jackson.

Gina Jackson: Hi, everyone. I'll be highlighting the (merit of the) proposed rule under voluntary proceedings, disposition and post-trial rights.

If you're following along I'm on Slide 20.

In voluntary preceding the proposed rule sets out that the agency and state court must act whether a child is an Indian child, providing the tribe with

notice of the voluntary proceeding including the right to intervene - notice of the right to intervene.

Consent of the parent or Indian custodian must be in writing, recorded before the court, and must explain the consequences, the terms of consent in detail, and the court certify that the terms were fully understood by the parent or Indian custodian. The consent document contents must set out any condition of the consent.

The proposed rule in disposition gives us guidance that the agency must follow ICWA placement preferences or tribal placement preferences even if there's a request for anonymity. Provide a clear and convincing evidence they conducted a diligent search to make placement preferences and explain if it couldn't be met, notifying parents/Indian custodians, family members, the tribe, et cetera, and maintaining documentation of placements.

Departure from placement preferences can only be done if the court finds good cause and that the cause basis must be included in the record. The party asserting good cause has the burden to prove good cause by clear and convincing evidence.

Slide 22.

Good cause to depart from the placement preferences must be based on the parents' request, if both attest they have reviewed the placement option, a child's request if able to understand the decision, the child's extraordinary physical or emotional need as established by a qualified expert witness which does not include bonding or attachment from placement or the unavailability of placement and a determination that active efforts were made to find

placements. Good cause may not be based on socio-economic status of a placement relative to another placement.

In post-trial rights, Slide 23, the proposed rule established procedures to vacate an adoption if consent was obtained by fraud or duress, or the proceeding violated ICWA.

It establishes who can invalidate an action based upon a violation which is the Indian child, parent, Indian custodian, tribe, regardless of whether that particular party's rights were violated.

It establishes adult adoptees rights to learn their tribal affiliation and encouraged states to designate someone to assist adult-adoptee, requires notice of any change in the child's status such as change in placement.

Slide 24, Post-Trial Rights (continued).

States must provide BIA with a copy of the decree or any order in final adoption including information on the child. States must establish a single location for all records of voluntary or involuntary foster care, preadoptive placement, and adoptive placement that will be available within seven days of request by the Indian child's tribe or the Department of Interior.

The records must contain, at a minimum, the petition or complaint, all substantive orders in the proceeding, record of placement determination including findings in the court record and social worker's statement.

Today we are assessing comments on this call in any provision of the proposed rule. We will also have another consultation coming up later this week.

And the important date to remember is May 19. That is the deadline for comments on the proposed rule.

Email is the preferred method to submit comments and that can be done, I promise, at bia.gov.

Thank you so much. We look forward to hearing from you.

Larry Roberts: Thank you, Gina.

So, this is Larry Roberts again and I just wanted to - we had a number of people doing the call that - while we are going through the PowerPoint and I just wanted to remind everyone that we have a number of people on the call and we will be limiting initial comments to five minutes and everyone to be as specific as possible in their comments to help us as we're thinking through the rule and considering comments on the proposed rule. And I would ask everyone that once everyone had initial opportunity to provide comment we'll provide opportunities for additional comments. And, of course, everyone has opportunity to submit written comments as well on the proposed rule.

And so with that I would open up the lines. I would ask when you begin your comments to introduce yourself and the organization that you're with so that we have that clearly on the record.

And, operator, we're ready for the first round of comments.

Coordinator: Thank you.

We will now begin the comment session.

If you would like to make a comment, please press Star-1, unmute your phone and record your name clearly. If you need to withdraw your comment, press Star-2.

Again, to make a comment, please press Star-1.

It will take a few moments for the comments to come through. Please standby.

The first comment comes from Michelle Mays. Your line is open.

Michelle Mays: Thank you. This is Attorney Michelle Mays, Staff Attorney with the Oneida Tribe of Indians of Wisconsin.

And the Oneida Tribe is very happy in regards to the fact that these regulations are being proposed to strengthen the BIA guidelines. We believe that these are very important so that consistency is taken across the board among states as there continues to be several issues from state to state in following the guidelines.

There were just a couple of concerns that we did have in regards to them and we are submitting written comments as well. We feel that the definition of imminent physical damage or harm is very narrow and that the current definition only discusses bodily injury or death and it does not include a child's mental health or safety and we believe that that definition should be expanded to include that.

In addition, in Section 1912 (e) of the Indian Child Welfare Act it references serious emotional or physical damage, but Section 23.121 of the Reg does not mention emotional, it only mentions physical damage. And we believe that the

Indian Child Welfare Act in the Regulation should read the same and should be consistent across the board.

One other quick statement is that we would like the definition of the Indian child to be clear that the child can be eligible in any tribe and that it doesn't necessarily have to be the same tribe that the parent is enrolled in as parents can be enrolled in more than one tribe and it could turn out that the child is (enrollable) in a tribe that's different from the parent and so we just want to make sure that that part is clear.

I thank you for the opportunity to comment. Thank you.

Larry Roberts: Okay. And thank you for your comments.

And I just wanted to - I know that we had a number of people indicate that they want to provide comments so we have approximately 14 people in queue. So if you're in queue now just please be patient. And, please, for those of you that are up next to provide comments, please be mindful of the five minute mark. Thank you very much.

Coordinator: The next comment comes from Lori McGill. Your line is open.

Lori McGill: Thank you. My name is Lori McGill. I'm a Partner at Quinn Emanuel Urquhart & Sullivan in Washington DC and I have handled adoption cases in both ICWA and non-ICWA cases.

I'm going to focus my brief comments today on the proposed regulations as they impact children who have already been removed from a biological parent and who is then placed in foster care or are waiting a foster or adopted placement.

I am opposed to the proposed rule because I believe it would harm those children and violate their constitutional rights.

I believe that the BIA developed this proposed rule without critical input from child welfare experts and organizations. And unfortunately I think that's evident in at least two related aspects of the proposed rule. First, the arbitrated restrictions that BIA would place on expert testimony, and, second, in the misguided instruction to state courts that would prohibit them from considering an individual child's best interest including her bonding and attachment to her current caregivers.

There is no basis in the statute itself or the legislative history for this aspect of the regulations. To the contrary, Congress could not have been clearer that it declined to define good cause because it was giving state court flexibility to make those determinations. In fact that's what BIA acknowledged in 1979 and Congress has not modified the statute since. Since then state courts has sensibly considered a child bond to her current caregivers who are often foster parents selected with the knowledge of the tribe as part of determining whether there's good cause to depart from the placement processes.

I believe the proposed rule would purport to overrule and preempt that virtually unanimous body of state law which is consistent with the overwhelming consensus among pediatric and psychiatric professionals about the severe harmful effects of breaking a child's attachment with her adult caretakers.

I believe the regulation also should consider the constitutional rights of children. Children in this position have a federal constitutional right to stability which is rooted in the due process clause and they should have their

individual circumstances considered before they're removed from a stable and fit family unit.

The California Supreme Court and other courts have explicitly recognized this right and I believe the proposed regulations would unconstitutionally burden this crucial liberty interest not to mention the serious 10th Amendment concerns raised by such an attempt to (comment to your) state courts in this manner.

Finally, I would add one point on the proposed rule repudiation of the existing Indian family doctrine. The proposed list of factors that should not be considered in determining the applicability of ICWA in the proposed rule includes whether an Indian parent ever had custody. As I'm sure many on this call are aware the U.S. Supreme Court recently held that whether the parent invoking the act ever had custody under state law is in fact highly relevant to determining, for example, whether the act's parental termination provision and the act's active efforts provisions apply.

Thank you.

Larry Roberts: Okay. Thank you for your comments.

Coordinator: The next comment comes from (Susan Sapp). Your line is open.

(Susan Sapp): Hello. My name is (Susan Sapp). I'm a private attorney. I've been practicing in the area of child welfare and adoption for the last 26 years and I oppose the proposed regulations.

(Permanently) I want to focus on the fact that these regulations harm women and children by placing an unauthorized and unconstitutional burden on a

mother's right to privacy in a voluntary placement. We're talking about newborn placements, voluntary placements when there has never been an Indian home created because during the term of the pregnancy the birth mother choose the best choice for this child to make a voluntary placement of her child for adoption. The proposed regulations conflict with ICWA and would place an unconstitutional burden on the right of privacy of women who have chosen adoption as a voluntary choice.

As recently as 1979 the BIA itself said that under ICWA confidentiality is given a much higher priority in voluntary proceedings than in involuntary ones, and the act mandates the tribal right of notice and intervention in involuntary proceeding but not in voluntary one. For voluntary placements the act specifically direct state courts to respect parental request for confidentiality.

These guidelines vitiate and destroy those fundamental principles because they create a de facto notice requirement in voluntary proceeding with no state involvement, just an agency or private adoption because it requires that tribes and family members be informed about voluntary adoption choices that birth mothers are making solely for the purpose of enforcing ICWA's placement preferences against the wishes or will of the biological mother herself.

The proposed regulations are in direct violations of her individual rights to privacy. She has the right to do an adoption privately without family members or the government or the tribe knowing of her decision and these guidelines vitiate that. It violates due process. It's contrary to the language and intent and purpose of ICWA.

Under the proposed regulations children who need to be placed for adoption may in many cases not end up being adopted because parents will be forced to

choose between doing what they believe is best for the child and preserving their constitutional protected privacy and anonymity. So in many ways these regulations are dangerous to children and to mothers.

Also, the entire process in my opinion, respectfully, is flawed. The entire process of how these guidelines were generated is flawed. As I understand it the BIA consulted only tribal governments and Indian organizations in advance of drafting the guideline even though they affect non-Indian parents and children who are only possibly within the definition of Indian child.

My understanding is that the BIA doesn't have expertise in child welfare and did not utilize experts in child welfare in drafting these regulations. I believe the BIA ignored the legislative history on ICWA. It ignored 37 years of court decisions interpreting ICWA and has attempted, in my opinion, to limit public comment from citizens living in the Eastern United States because they only scheduled public comment hearings -- as it appears to me -- West of the Mississippi.

It doesn't appear that there were any comment hearings in any of the 20 most populous states. So it appears that this process is flawed to me from the inception and I would ask that the BIA withdraw the guidelines of proposed regulations for proper reconsideration.

Thank you.

Larry Roberts: Okay. Thank you for your comments and thanks for participating on the nationwide call today.

And we're ready for the next caller.

Coordinator: The next comment comes from Shari Levine. Your line is open.

Shari Levine: Hi. I'm Shari Levine. I'm the Executive Director of Open Adoption & family Services, a non-profit agency. I've been with the agency for 23 years. I'm also an adoptive mother and the President of the Coalition of Oregon Adoption Agencies.

I oppose the proposed regulations because they would hurt parents and children by denying parents due process. The proposed regulations would place an unconstitutional burden on the fundamental right of parents to make decisions regarding the care, custody, and control of their children in voluntary adoptive placements. The proposed regulations limit parental choice by requiring the participation and by necessary implication notice to tribes and extended families of parents in placement decision and by devaluing parental preferences in the choice of placement resources and determinations of good cause to deviate from ICWA placement preferences.

I think the BIA should take into account open adoption and especially in voluntary relinquishments. In our open adoptions the birth family is choosing meeting and creating a close friendship with the adoptive parents. Through the blending of these extended families the birth family brings their culture and family traditions to the adoptive family. The adoptive families are more than happy to enroll the child if their child is an Indian child and to honor their heritage. The birth parent's right to make decisions about their child's future should be honored by the tribe.

The proposed regulations tell parents of children who are or even may possibly be Indian children that deciding to make a voluntary placement for adoption means losing their fundamental right to privacy and anonymity with resulting possible ostracism, shunning and a myriad of other negative

consequences, and their fundamental and constitutionally protected right to make a decision regarding the care, custody, and control of their child based on their determination as to their child's best interest and possibility of continued birth family contact. This conflicts with the language and intent of ICWA. I believe that the proposed regulation should therefore be withdrawn.

Thank you very much.

Larry Roberts: Okay. Thank you for your comments.

Coordinator: The next comment comes from Albert Lirhus. Your line is open.

Albert Lirhus: Hello. My name is Albert Lirhus. I'm an attorney practicing primary adoption law in the state of Washington. I've been involved in this for over 25 years. I represented adoptive parents, agencies, birth mothers, and birth fathers.

I oppose the proposed regulations because they would hurt Indian children by unlawfully interfering with the responsibilities of state courts. The Indian Child Welfare Act's legislative history explicitly states that the use of the term "good cause" was designed to provide state courts with flexibility in determining the disposition of a placement proceeding involving an Indian child.

In 1979 BIA said that nothing in the legislative history of the Indian Child Welfare Act indicates that Congress intended the Interior Department to exercise control over state courts or to legislate for them with respect to Indian child custody matters. BIA further said that it would have been an extraordinary step for Congress to do so.

Nevertheless, the proposed regulations will predetermine the question of good cause in most cases by imposing limitations on both expert testimony and the consideration of attachment and bonding issues. This would undermine the keystone concept of the best interest of the child from the court's consideration in child welfare cases covered by the Indian Child Welfare Act in direct conflict with the clear language and the intent and the purpose of the Indian Child Welfare Act.

Specifically in the state of Washington the first statute in the adoption chapter RCW 26.33.010 provides that the guiding principle in interpreting adoption statute is what is in the best interest of the child. The proposed regulations would be absolutely contrary to that.

Except for limited matters reserved to the Secretary of the Interior, state courts that decide Indian child custody cases should have the primary responsibility for interpreting the Indian Child Welfare Act. The proposed regulations are in error and should be withdrawn.

Thank you.

Larry Roberts: Okay. Thank you.

Coordinator: The next comment comes from (Michael Goldstein). Your line is open.

(Michael Goldstein): Hello, hi. My name is (Michael Goldstein). I've been an adoption and foster care attorney for over 30 years representing many birth parents over the years in voluntary and conditional surrenders which is what we call from our foster care parents when a birth parent can decide conditionally to place her child with the family that's already fostering their child.

I oppose the proposed regulations because they unconstitutionally are going to affect the birth parent's rights in two ways.

One is certainly is would be to choose. And, again, I'm talking about young ladies I represented over the years that have had no connection with their Indian background themselves. They don't live on tribal ground. They may be (164th) of bloodlines, and they want to make a choice themselves voluntarily as to where their child is going to be placed. So, certainly, the placement guidelines that are now going to be put into effect much strongly sort of leaping out the state law concepts of best interest of children and birth mother choice are really going to be overwritten by these guidelines almost immediately if they come into play.

The other one would be my - birth parents who I've represented over the years who cry for confidentiality. (Unintelligible) certainly allow them complete confidentiality not to name birth fathers if they don't want to (knock) the name relative. So the imposed notice restrictions in a voluntary proceeding like this really go against that and I think it's just going to lead to another case going up to the Supreme Court and wasting everybody's time and energy and things like that.

I am opposed to the regulations. I am agreeing with a number of the people that have spoken you just need to pull these regulations, withdraw them until you have the proper input of everybody into processing these regulations.

And I thank you for allowing me the time to present this to you.

Larry Roberts: Okay. Thank you. Thank you for your comments.

Coordinator: The next comment comes from Donald Cofsky. Your line is open.

Donald Cofsky: Yes, thank you.

I'm Donald Cofsky. I'm an attorney. I practice law in the state of New Jersey and in Pennsylvania. I am a former president of the American Academy of Adoption Attorneys, a co-chair of the New Jersey Academy of Adoption Attorneys and I serve in - on the New Jersey Supreme Court Rules Committee advising and assisting in the drafting of rules guiding adoption. I also lecture on the subject and including the Indian Child Welfare Act and what it is, why it was adopted, and the standards.

I oppose the guidelines that have been promulgated as well as the regulations that are being proposed. And I do this on many levels.

For starters I find it extremely discriminatory. I can't think of any other individual in the United States that has this right of privacy removed. We might as well say if you've got Italian (extract) we're going to let people in Italy take the child. It isn't logical.

Now I understand the concept and the reason for the Indian Child Welfare Act and that was quoted directly by Justice Alito in his opinion on the - in the Baby Girl case over a year-and-a-half ago. And I read and reread that opinion. And I must say I am just - I'm shocked that the BIA can come out and say, and by the way we are doing away with the existing Indian family doctrine. It doesn't exist anymore when state courts have embraced it. And if you bother to read the Supreme Court decision I think you'll see the majority also embraced it. It does exist.

We’re not talking about breaking up existing Indian families, and they should not be broken up. But what has been proposed is so far removed from the original intent and purpose of ICWA it's almost unrecognizable.

I also question the - whether the BIA has the authority to issue and propose regulations. I do not believe so. And I believe my position is supported by the very guidelines that came out after ICWA was adopted.

I'm also very concerned that despite the reference having been made that we had listening sessions, I can tell you that the American Academy of Adoptions was not asked to participate and in fact when we volunteered and requested to participate we were denied that right -- which really makes one wonder who wrote this.

I find that the logistics and standards that are being imposed such as what state courts are now required to do are totally unworkable. Not only are they unworkable, labor intensive, but extremely costly. I question, will the federal government now fund the states to have to comply with this because the states certainly don't have the money to do it.

And on voluntary placements I'm very, very concerned because you have completely removed the right of privacy. The fundamental right of privacy guaranteed by the United States constitution is specifically recognized by ICWA. You've done away with it and saying, well we'll seal records to make it anonymous, but when you read it and apply it it's abundantly clear that if a woman wishes privacy - and she may not have any Indian background whatsoever, but she may have a - maybe a birth father who has 2% somewhere who is also in agreement with the voluntary placement, neither of whom have ever lived on a reservation, neither of whom have ever been registered, but could qualify with certain tribes for membership.

That notice will be given. You can talk about the court sealing it. That's irrelevant because under the preferences every person in the family of those individuals will be put on notice as will the tribe regardless of the consequences. That's contrary to the constitution. That is contrary to ICWA itself.

And what truly disturbs me is that the end result we're going to have -- and I can tell you this with 30 years of practice -- you will have young birth mothers or birth mothers coming in who when they're advised of this will do one and several things. They will either say, thank you, leave and have an abortion rather than having their rights trampled upon, or they'll go through another non-profit agency or another attorney or another family and say, "ICWA, Indian, nah, we have no - I have no heritage. I have no background there." So the child will never - if the child is born will never know of their cultural background. Or if it's too late for the abortion and they don't want to lie, safe haven. The child will be dropped off at a fire station, police station or hospital with no questions asked.

So, overall, I find this to be unworkable, ill thought out and it deserves to be withdrawn. Both the guidelines and regulations.

Thank you for your time.

Larry Roberts: Okay. Thank you for participating in the meeting today.

Coordinator: The next comment comes from Diane Kunz. Your line is open.

Diane Kunz: Yes, hello. I'm Diane Kunz. I'm Executive Director for the Center of Adoption - for Adoption Policy, I am a lawyer and a historian of American History who taught at Yale and Columbia.

I oppose these regulations. We at the Center oppose these regulations and we would like to highlight as others have the due process implications both for mothers and children.

In 1978 when ICWA was passed we were looking at an attempt - in a rightful attempt in our view to change the problems of the past. The fact is as we will all agree, Indian children on reservations were treated terribly in the - since the first half of the 20th century and beyond as were many groups.

We have gone beyond that since 1978, yet these regulations attempt to bring the world back to 1978. In fact that's 1878. Instead of stopping all Indian children for being on reservations we are going to deprive children and women - mothers, fathers, who have a right to privacy and who have a right to choose the best interest of their child because that's what we all want.

We don't believe that a group is a group. We believe that each child is an individual to be judged by his or her own best interest and each mother in her heart has a right to decide what is the best interest of her child and herself. That's what the Baby Girl case talked about. That's what Roe v. Wade talks about. That's what our constitution and bill of rights talk about.

For centuries we didn't treat Indian children as well as we treated white children. Now we seem to be doing the exact same thing from the other side before listening.

Larry Roberts: Thank you, Ms. Kunz.

Coordinator: The next comment comes from Mary Hayes. Your line is open.

Mary Hayes: Good afternoon. My name is Mary Hayes. I'm an Assistant Public Guardian in Chicago Illinois. We represent children in state court child protection proceedings.

And the Public Guardian has serious concerns about the proposed regulations especially and so far as they could prevent a state court from considering the significant attachments that a child has formed in a foster home when transferred to tribal court is requested at a late stage in the proceeding. After a parent or litigant has had an opportunity to learn that the state court case has not gotten well for them they can and have here in Chicago used the ICWA in an effort to seek a different forum.

And it is concerning to the Public Guardian also that these proposed regulations were prepared, apparently, without input from the advocates for children in state court proceedings. And the Public Guardian shares many of the concerns that have been raised especially in terms of questioning the authority of the BIA to define good cause to not transfer.

And I do have a question -- I would welcome an answer from any of the panelists -- about how good cause to deny a transfer to a tribal court would be defined under these regulations because it appears that these have been - what the regulation set out what good cause would not be, but the statute does say that there could be good cause and that the Public Guardian is very concerned about how this could impact children in foster placement when it comes to termination of parental rights.

Thank you very much.

Larry Roberts: This is Larry Roberts. Thank you for your comments. And thank you for your question.

So, I'm not trying to avoid answering your question. I'm going to answer your question the same way that we answer questions like these during our rule making and that is that whether it's a rule making on ICWA or other matters if we haven't defined something right or haven't defined something like you're saying we haven't defined good cause, what I - what we would want out of this process is for you to suggest a definition of good cause and suggest, you know, language for that. So at this stage in the process we're in the process of receiving those comments. And as I said before the most helpful comments are specific comments in terms of how the rule can be improved.

So I know we've heard a lot of comments today questioning the authority for the rule making and other matters. We will take all those in a very close look and consideration as we're moving forward, but I would ask that if you have a definition in mind of good cause that you provide that during this rule making process.

Mary Hayes: Thank you.

Coordinator: The next comment comes from (Steve Kirsh). Your line is open.

Steve Kirsh: Thank you.

My name is Steve Kirsh. I'm an adoption attorney in the state of Indiana. I've been practicing adoption law for over 30 years. I'm also a past president of the American Academy of Adoption Attorneys. I've been actively involved in

legislative process here in Indiana and recognized by the Indiana General Assembly for my work in the area.

My law practice is limited to adoption. I've been involved in a number of cases involving voluntary ICWA terminations and I too oppose these regulations. Rather than recapping what the previous speakers just in front of me except for the women from the tribe, I endorse all of those comments and rather than restating them I would just take them as my own.

The only thing I would add is that I don't believe that the regulations - that BIA should go back to the drawing board and seek additional comments. I think that if the BIA has issues with the interpretation and the implementation of ICWA they should go back to Congress and ask Congress to change the law. There's nothing particularly in the federal law that requires notice to the tribe in voluntary proceedings. BIA in establishing these guidelines is usurping congressional authority and that of the United States Supreme Court to pass a rule which is not required by federal law or by the law of the United States Supreme Court.

I would request that the ICWA guidelines be withdrawn and that if BIA wishes for change to be made to the law they should contact Congress and ask Congress to do it as it it's federally mandated responsibility.

Thank you.

Larry Roberts: Thank you.

Coordinator: The next comment comes from (Jean Cavaliere). Your line is open.

(Jean Cavaliere): Hello. My name is (Jean Cavaliere) and I have bene practicing in the area of adoption law for over 15 years. I've been representing birth and adoptive parents in many proceedings, some of which do obviously involve Indian or possibly Indian children.

I would also oppose the regulations for the reasons that have already been stated by many of the prior callers. And, again, as Steve said I don't want to rehash everything that they have said.

But I am very, very concerned about the obliteration of a birth mother's right to privacy in voluntary placement. I think that the proposed regulations are in direct violation, obviously, of that right and her due process right, and are contrary to the language intent and purpose of the Indian Child Welfare Act.

And as Don Cofsky had stated, I think it will force the birth mother to choose between doing what she feels is in the best interest of her child or perhaps make other choices that are not choices that she would want to make such as an abortion, safe haven, maybe parenting a child that she feels ill prepared to parent, and also encourage lying about Indian heritage.

So I'm very concerned about these regulations and I also believe that there's no authority to issue them and I believe - I think that they - I oppose them.

Thank you very much.

Larry Roberts: Okay. Thank you.

Coordinator: The next comment comes from (Alicia McDowell). Your line is open.

(Alicia McDowell): Hi. This is (Alicia McDowell) and I am in Denver, Colorado. I'm a foster parent and (unintelligible) foster care for almost three years.

I don't support the proposed rule change to ICWA, although I do support ICWA as a whole. Applied properly the ICWA are protecting Indian children for having their culture striped and applied improperly -- as it would be if the BIA proposed rules are put into law -- children are at risk for serious trauma.

Under these proposed rule elongated times for intervention are allowed. This puts children at risk for developing strong long term bonds with caregivers and traumatized by severing that bond.

It's more prudent to require earlier interventions so that the (whole) child adapts well and so they are placed in appropriate placements at the get go of their proceedings. Extended timelines (unintelligible) substantial ability to seek legal (regress) but allow children to form parental bonds with caregivers and then allow that bond to be repeatedly broken, reform, and then broken again. The emotional burden is felt by the child with these regulations which is contradictory to the intent of ICWA.

The proposed rules also disregard each child's unique needs by disallowing them to be separately evaluated on a case-by-case basis by the states. Stating the best interest should not be considered even during in the placement hearings is just ludicrous.

For anyone in true placement hearings, the best interest is probably will be the main goal of the proceeding since it determines where a child should live for the remainder of his or her childhood. Disregarding best interest would emotionally harm a significant portion of native children. It forces the judicial

authority that has the most information about the child to remain silent about their known needs.

How does harming the children protect them? And of course it doesn't.

This particular change would allow for the bigger nation (unintelligible) purpose and allow for dangerous precedence we set that tell the court to disregard the best interest for children.

In all children's welfare cases, throughout proceedings children's need and best interest should remain paramount. The proposed rule state that both parents must object to tribal placement (unintelligible) for this is good cause clause.

This describes any situation in which one parent or birth parents cannot be located, is/or mentally disabled, or has been proven unfit to evaluate them. Now prescribing BIA do - the proposed rule BIA rules do that tribes have unquestionable authority on what's the best interest for all children child with the same brush. I understand the need for consistency, but not all child needs are the same. It's serious having (in its worst). In some cases it allows tribes who have never met children and know little to nothing about them to make decisions regarding a permanent damage of their emotional and physical needs.

It is also concerning to me that emotional needs are not considered and they are not in the language of the guidelines.

It's ludicrous to even ponder that (unintelligible) considering the best interest of children in child welfare cases. (Unintelligible) cases deal with children

who are in foster care who have already been abused in part and experienced very real forms of PTSD and myriads of other disorders because of it.

I know the ICWA was meant to create a higher standard for Indian children in the child welfare system in order to prevent native of children from being removed from their family's unnecessarily. Its frequent misapplication and this proposed rule seek to create standards for these children languishing in the system for years instead of months and provides and additional source of trauma for them.

This looks like a collection of rules to me that is meant to achieve some form of reactive justice for cases that already have been tried and disliked by the BIA.

Thank you.

Larry Roberts: Okay. Thank you for your comments.

We have roughly four people in queue to provide comments. Operator, can you remind folks of the mechanism that they use to identify if they want to make comments on the proposed rule.

And, again, I would ask for purposes of this call for - at the moment that we continue to limit it to those that have not yet provided comment. And once we're through that phase we'll open it up again for any additional comments.

Coordinator: Thank you.

As a reminder if you would like to make a comment you may do so by pressing Star-1 and recording your name at the prompt.

Again, you may press Star-1 to make a comment.

And our next comment comes from (Bonnie Cleaveland). Your line is open.

(Dr. Bonnie Cleaveland): I'm Dr. (Bonnie Cleaveland), a board-certified clinical psychologist and professor.

I volunteer my name in various child welfare activities including this one.

I review the following scientific literature. How abuse and neglect affect he developing grain, transracial adoption, best interest of the child, family preservation, and identity and psychological functioning of American Indian.

As a result I oppose the proposed regulations.

Those who are in favor of the regulations and those who oppose them all understand the shameful history of majority culture removing native children in mass numbers. Cultural trauma has less indigenous populations suffering from epidemic, poverty, mental illness, substance abuse in child's removal.

It's impossible to preserve a culture without its children. These regulations will create generations of psychologically and neurologically damaged children who will grow up to be damaged adult.

Have you ever wondered why abuses and neglected children often have learning and behavior problem? When science has talked about attachment, we're talking about not only a child's relationship with the caregiver but changes in her brains structure and function.

A child's brain is not born in its final form. Just as the bone need nutrition to grow and strengthen, the brain needs experienced to develop properly. Babies and even children can't regulate their own emotional experiences. In infancy it's as if the child doesn't exist on her own, but the mother and child are one life.

The building blocks of the brain are overproduced in infants. Imagine a stack of LEGOs as gig as a pickup truck. Only the LEGOs that are used for building remain in the brain. The others are discarded.

If brain circuits for healthy social connection go unused or are affected by trauma, the capacity to relate well to others is diminished. Beginning in infancy one or more stable responsive caregiver are essential for a child's brain to develop properly. When neglected or abused the child's brain is changed in ways that damage her ability to regulate emotion and to form positive and stable relationships throughout her life.

Irrefutable scientific evidence demonstrates that trauma victims are more likely than the general population to be re-victimized by other abusers. Emerging research indicates that one generation's trauma shows up in the genetic makeup of the next generation.

The sooner a maltreated child can form a bond with a secure attentive caregiver the more likely she is to heal. Even the brain damage can heal with early and appropriate intervention. An abused or a neglected Indian child should be placed immediately with an Indian family especially one she already knows.

But if no stable loving Indian family is available, the child should be placed with whatever family can meet her needs. Multiple placements are devastating

for mental health so a child should not be removed again from a family she loves and who loves her.

We must face what is true rather than being blinded by what we wish were true. We must come to an understanding for the sake of these children. We are all human more the same than we are different.

There are so many ways to help Indian children. Researchers have demonstrated the effectiveness of programs meant to recruit foster home and to prevent family breakup. Tribal leaders and native scientists can adopt those programs to indigenous population.

Wouldn't it be better to strengthen families to prevent child abuse and neglect? Wouldn’t it be better to have plenty of Indian homes to care for these most fragile and neglected children? We have to look for reality not (letter) it to solve problem.

There are many things that we know about children's needs and development. Those realities apply to children in every culture throughout the world. We ca come together because we all want what's best for children.

Please allow best interest hearings for Indian children and allow scientific expert witnesses. Frederick Douglass said it eloquently, "It is easier to build strong children than to repair broken men."

Larry Roberts: Okay. Thank you for participating in the call today.

(Dr. Bonnie Cleaveland): Thank you.

Coordinator: Next comment from (Janelle Lapierre). Your line is open.

(Nick Larry): Hi. This is (Nick Larry) and (Janelle Lapierre). We're from Montana Child & Family Services.

We just like to say that Montana Child & Family Services believes firmly in ICWA compliance and it's vital to improving the safety and permanency well-being outcomes for Indian children, the families served by our agency. Promoting and maintaining the connections of Indian children and their families to their tribe is essential to preventing and treating child maltreatment and Montana values and respects the cultural and the value of each tribe within our state.

Despite agreeing completely with the underlying rational need for these regulations, there are concerns and overall comment is that these regulations is written or create significant additional workload requirements for child and family services and state courts without any increased funding.

Montana is currently facing record-high numbers of reports, investigations in children in out-of-home placement. The proposed regulations are implemented as they are written. There are concerns that Montana may be placed in a position to choose between compliance with the ICWA and meeting the safety permanency well-being needs of non-native children and family.

Also, Montana District Courts which are generalist jurisdiction and the Office of the State Public Defenders have reported workload issues as a result of the significant increases in abuse and neglect cases that have been filed. Implementation of the regulations as written would further compound these workload issues faced by our legal system and we depend on these for timely resolution of our cases. Montana is concerned that this would lead to

significant delays in achieving permanency for children and may leave children less safe.

Based on these realities we are strongly suggesting and recommending that the regulations be (awarded) to provide greater flexibility to ensure the needs of all children and families can be met by child and family services and Montana's legal system in particular. When written the agency must follow regulations. We are suggesting these be made to show or should.

Again, there is no additional resources provided for these and meeting the strenuous interpretations is forward in these regulations. Additional resources will be required. Should is more appropriate given the states need to serve all children, families using only the resources.

There are a few specific things we would ask for clarification on. And 23.2 under definition we would ask that there be greater word - greater definition apply to the terms engage and actively assist.

Twenty-three-one-zero-five we have eight Supreme Court rulings that conflict with the new guidelines. We are curious as to how exactly this would play out. Our concern is that this would lead to unnecessarily delay for children and increased litigation.

Twenty-three-one-zero-seven, this appears to be in conflict with different sections of the proposed regulations that speak to parents request for anonymity. And that actually (curves) several places throughout this so we'd like some clarification on how the parents anonymity is supposed to be balanced with the requirements of this regulations.

When must state dismiss a court action 23.110? The wording in this, states court must dismiss any child custody proceeding as soon as the court determine that it lacks jurisdiction. Disappears create a safety issue. The wording seems to imply the transfer to tribal court is not an option. This could result in cases being dismissed where there are children who are imminent risk of harm.

In particular in rural states like Montana this is an issue because many tribal members that live on reservation have to go off reservation for services such as for hospitals if - under the current system if there is a tribal infant, for example, that might be born to have positive for meth or some other drug, a call would come in to our centralized and take that report. Because it's off reservation we'd go in to a state worker. Right now BIA is saying that they cannot investigate these cases because they do not have the jurisdiction to go off reservation. And so if we investigate it doesn't really seem to allow us to transfer, then what are we to do.

Twenty-three-point-one-one-two, the time limits and extensions, we would request that it all be allowed that the qualified expert witnesses on this could testify via satellite or some other mechanism as opposed to in-person given the huge nature of Montana and whether it'd be non-certain as it is this would be helpful.

Twenty-three-point-one-thirteen, it seems that there's contradiction in this with 23.110. In twenty three Montana states that the states must dismiss court proceedings. In this one it talks about they must make efforts to transfer. It seems these two are in conflict. Some clarity on that.

Twenty-three-one-seventeen, determination of good cause transfer again. There is Montana case law present for ruling into this area. This is just another

example how the new regulations could lead to increase litigation delays in resolution of cases involving Indian children. These will also potentially put Montana position of being held accountable for failing to meet permanency timelines as required by ACF in the upcoming CFSR.

Larry Roberts: Okay. Thank you for your comments. Again...

(Nick Larry): And I got just a little bit more, thanks.

Twenty-three-one-thirty-one...

((Crosstalk))

Larry Roberts: ...we have a number of folks in queue. So we've already sort of gone over the five minute limitation, but if you can just sort of summarize the additional comments, the specificity of your comments are really helpful and we really appreciate it. We just have a number of folks in queue waiting and I'm asking everyone to observe the five minutes. So if you could summarize the rest of your comments that would be helpful.

(Nick Larry): On qualified expert witness, it appears that this is expanded. We don't believe necessarily the qualified expert witnesses are going to have the ability to speak to extraordinary needs of children. That's not what this is. And with also some clarifying on the - any court or company jurisdiction in 23.133, does this mean that tribal courts could overrule a district court decision or they could go into a different district court and one where the decision was made.

And just in general, I guess we'd like to say that we don't believe that children -- particularly native children -- are going to be best served by increased regulations. They're best served by providing additional opportunities for staff

to go out and meet with the families and meet with the children, and work towards permanency options. And the time that we spent in potential litigation and completing additional paperwork is just making things worse. It's not making things better for native children.

Larry Roberts: Okay. Thank you.

Coordinator: Next comment from Randall Keys.

Randall Keys: Hi. My name is Randall Keys. I'm an attorney with the Wisconsin Department of Children and families.

Wisconsin has been a supporter of ICWA. We have our own Wisconsin Indian Child Welfare Act.

I'm going to limit my comments to just a couple of provisions. There've been sort of very specific comments.

The first is on the recordkeeping requirement in 23.137. It's not clear how that's supported by the statutory language and we're not clear about, you know, how you expect us to do this, what the funding mechanism is, when are we supposed to have it done by, have you thought about county administered systems where these records are not currently in a central location so we have concerns about that provision.

The emergency removal provision states that emergency removal can extend beyond 30 days without a notice hearing, but if you follow all the procedures in 23.111 and 23.112 for notice hearing and the authorized delays it will take you past 30 days and so the courts are going to have to rely on extraordinary circumstances for what is a routine delay.

And then 23.132 you've added in the voluntary consent determination where you could challenge the adoption based on the consent being obtained by fraud or duress. You've had the provision set or to forfeit proceedings fail to comply with ICWA. And then there is no guidance on what level of not compliance is necessary to vacate an adoption. And you have two years to do that and it seems like that's creating an uncertain in an area that we don't need uncertainty.

So those are the three comments I want to make and thank you very much.

Larry Roberts: Thank you. And thank you for participating in the meeting today.

Coordinator: Next comment is from (Katherine Forth).

Larry Roberts: Hello?

(Katherine Forth): Hello?

Larry Roberts: Yes, we can hear you now.

(Katherine Forth): Thanks.

This is (Kate Forth). I'm a staff attorney at the Indigenous Law and Policy Center at Michigan State University College of Law. I've been working on issues around the Indian Child Welfare Act for the past ten years and I'm calling in support of these regulations.

We will be submitting a written long comment from law professors that we will be submitting in writing, but briefly the Department absolutely has the

authority to promulgate these regulations. The act itself includes a broad delegation of authority which under current Supreme Court juris prudence would stand out under the (Chevron) difference.

In addition this is absolutely necessary. These regulations are absolutely necessary at this point with some sort of consistency across the states.

Passing federally legislation that is enforced by state courts and child welfare is not out of the ordinary, nor is promulgating regulations pursuant to their flaws. Law perhaps (unintelligible) time from the point of view of federal direction to state courts, ICWA is part of a long line of federal statutes that are applied in state courts daily such as the Fostering Connections to Success and in the Adoptions Act, Keeping Children and families Safe Act, Child and Family Services Improvement and Innovation Act, et cetera.

The narrative that all family rely is the exclusive prevue of the state is simply no longer true and hasn't been for some time. ICWA is a very specific statute. A remedial statute. One that exists because of the practices of both states and private adoption attorneys. This is reprimanded in the legislative history of ICWA. There is no question that Congress had in mind both public and private agencies when it passed this law.

While it is true that basic - I just want - like to say finally that the absolute inconsistency of the application of this law from state-to-state means that those Indian children are treated differently by state courts across the country and demonstrated that there's ambiguity and issues with the law that need to be clarified by the federal government. These regulations go a long way down that road to providing guidance and clarity to state courts that desperately need them.

Thank you very much.

Larry Roberts: Okay. Thank you for participating today.

Coordinator: Next comment is from Theresa Roetter.

Theresa Roetter: Hello. My name is Theresa Roetter. I'm an attorney in Madison, Wisconsin. I have served as a guardian ad litem for children in hundreds of child protection matters and I represent mothers making adoption plans in private placements.

I oppose the regulations. I feel that there is no longer any balance between all the interests if these regulations were to be put in place. That there is very clear subordination of the rights of children and parents, and that only the tribes interest have been raise to the top. So the intent of the Indian Child Welfare Act has now been adjusted significantly to provide no balance in the considerations.

My specific grave concerns are about the elimination of the consideration of the due process rights for both parents and children in looking at permanency. And the elimination of the consideration of best interest, attachment and bonding in crucial stages or planning for children is very dangerous to the health and welfare of these children.

Certainly it would result in children being parented by women who do that will able to do so. That's not good for Indian children and it will not provide long term stability.

I have worked in many, many voluntary cases with tribes in this and other states to come up with a plan that allows the child to both be enrolled and to continue their active involvement in the tribe and to be contributing members

of the tribe while still respecting the due process rights of the mother to make an independent placement decision for her child. Under the proposed regulations that would not be possible any longer.

And I am speaking today to voice my opinion that the proposed regulation should be withdrawn and sent back for further work and effort and input from all of these people wo are, you know, commenting today and to work to better balance the interest of the parties again,

Thank you.

Larry Roberts: Okay. Thank you for participating today.

Coordinator: Next comment from Elizabeth Hopkins.

(Elizabeth Hopkins): I'm a member of the American Academy of Adoption Attorneys and I have handled adoptions in New Jersey for the past 30 years.

I've listened to the comments of the previous 11 callers, ten of whom oppose the proposed regulations. And rather than repeating all of their comments I too oppose the proposed regulations. I believe the BIA does not have the authority to promulgate them and in attempting to do so the BIA has ignored the legislative history of ICWA and has also ignored 37 years of court decisions interpreting ICWA.

Furthermore, it's evident that the BIA has attempted to limit public comment from those of us living in the Eastern United States by only scheduling public comment hearings West of the Mississippi and also by failing to schedule any public comment hearings in any of the 20 most populous states.

I also think that if the proposed regulations were passed, that children would be the ones who would suffer because I believe that those regulations do not consider the best interest of the child and would result in breaking of bonds of attachment that I formed between the children and their caretakers.

For these reasons and also the reasons cited by those previous callers, I oppose the proposed regulations.

Thank you.

Larry Roberts: Thank you for participating today.

Coordinator: Next comment from Ken Rathert.

Ken Rathert: Hi. I'm (Ken Rathert). I'm an adoption attorney in Michigan. I'm very active on a statewide subcommittee as part of this Family Law Section. I'm also a Fellow in the American Academy of Adoption Attorneys.

And I work a lot with birth moms as well as birth - adoptive parents. And one thing that many - I'd say the vast majority of birth moms want is a degree of privacy. And to think - in the case - and I'm only talking about cases of voluntary termination. To think that they are forced to give their community -- that is to say the tribe -- notice and have them come in when other birth moms -- Polish, Dutch, German descent -- don't have to do that that just smacks a total inequality and it really means that Indian birth moms don't have the choices that are available to others.

And I thought we had treaties on this. I thought we had ICWA which said that this doesn't apply to voluntary terminations, but now suddenly BIA is coming up with these regulations which will mean that Indian birth moms just won’t

have the same rights and that is unfair to them, unfair to their children. It is just fundamentally unfair.

And I do a lot of work with young people of about middle school age. How would we explain that law to those people? To young people -- middle school or high school -- that if you're Indian you don't get the same rights as if you're not Indian.

Would somebody from the Dutch community -- and we have a lot of Dutch here in Western Michigan -- would they want a notice to go out to all the Dutch clubs and things that she's going to consider an adoption? That is just - it is beyond the pale. I cannot fathom how anybody thought that would be a good idea, good for children and good for the birth moms. It doesn't make any sense.

Larry Roberts: Okay. Thank you for your comments today.

Coordinator: Next comment is from Margaret Swain.

Margaret Swain: Good afternoon. I am a Fellow of the American Academy of Adoption Attorneys and have represented countless birth parents as they make their decision to place voluntarily their children for adoption.

I oppose the proposed regulations because they would harm women and their children by placing an unauthorized and unconstitutional burden the mother's right to privacy.

Furthermore the proposed regulations conflict with ICWA and would place an unconstitutional burden on the privacy of - on the right to privacy of women

who believe that their best choice is to make voluntary placements of their children for adoption.

In 1979 the BIA said under ICWA confidentiality is given a much higher priority in voluntary proceedings than in involuntary ones and the act mandates a tribal right of notice and intervention in involuntary proceedings, but not voluntary ones. The guidelines are clearly in conflict with this stated purpose.

The proposed regulations were created de facto notice requirement in voluntary proceedings by requiring that tribes and family members be informed about voluntary proceedings for the purpose of enforcing ICWA's placement preferences. So, I would concur with the comments of my colleague Ken Rathert.

The proposed regulations are in direct violation of an individual's right to privacy in due process and are contrary to the language, intent, and purpose of ICWA. Under the proposed regulations, children who need to be placed for adoption would in all likelihood not be placed because parents will be forced into a choice between doing what they believe is best for their children and preserving their constitutionally-protected privacy and anonymity in voluntary placements.

The proposed regulation should be withdrawn and I endorse the comments in opposition that has been made on this call.

Thank you for allowing us the opportunity to speak.

Larry Roberts: Okay. Thank you for participating today.

Coordinator: The next comment is from (John Greene).

(John Greene): Yes. I'm (John Greene). I'm an attorney in Annapolis, Maryland. I've done a thousand or fifteen-hundred adoptions over the years and represented many, many folks who have been thinking about placing their children for adoption.

These regulations are deficient in many respects, but I wanted to focus especially on the voluntary placements.

Clearly BIA needs to rethink this. What you're doing is you're taking away a person's right, a parent's right to choose what's best for their child.

You would be substituting an inflexible rule with a parent's right to decide what is best for their child. What in effect you'd be saying to that parent is you have a choice. You have a (unintelligible) choice. You could either choose not to place your child for adoption -- something you know is wrong. That you know that you're not going to be a good parent and this child is not going to thrive -- or you can choose to place your child and have anonymity revealed and have your constitutional right of being able to choose where to place your child waived.

So, in effect the BIA is leaving many, many, many parents or would be leaving many, many parents with the position of having to make a choice that would either be, A, very harmful for the child or, B, harmful, potentially, for the child and also for the parents.

So for those reasons I would agree with those who have spoken before me. I believe the Department needs to rethink this. It is absolutely was never anticipated by Congress and there are many reasons including the

constitutional reason that it shouldn't be permitted to go forth in this regulation.

Thank you.

Larry Roberts: Thank you.

Coordinator: Next comment from Chrissi Ross Nimmo.

Chrissi Ross Nimmo: Hi. This is Chrissi Ross Nimmo. I'm first and foremost the mother of Indian children. I'm a tribal citizen of the Cherokee Nation and I would add that my nation is not a club or community, but a sovereign independent government. I'm also the Assistant Attorney General for Cherokee Nation, Lead ICWA Attorney, and have represented Cherokee Nation in hundreds of ICWA cases across the country both voluntary and involuntary.

I wholeheartedly support the rules promulgated from the BIA and the Cherokee Nation will be submitting substantial written comments as well as attending the tribal consultation and public hearing in Tulsa, Oklahoma on Thursday.

I believe the regulations are consistent with the text of ICWA and the holding of Adoptive Couple v. baby Girl.

Specifically, I believe the regulation - their consistency with the policy that is promulgated in the text of ICWA stating that it is a policy of this nation, the United States -- to protect the best interest of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimal federal standards for the removal of Indian children. We need further

regulations because the states do not uniformly apply these minimum federal standards.

Last year Cherokee Nation was involved in cases in all 50 states and we saw firsthand the (disproportionate) treatment from state-to-state involving Indian children.

We also believe that good cause and other specific terms contained within ICWA need limiting instruction of the federal regulations specifically in Mississippi band of Choctaw Indian v Holyfield, the Supreme Court said, first and most fundamentally the purpose of ICWA gives no reason to believe that Congress intended to rely on state law for the definition of a critical term. Quite contrary it is clear from the very text of ICWA not to mention its legislative history and hearings that lead to its enactment that Congress was concerned with the rights of Indian families and Indian communities vis-à-vis state authorities.

Finally I would like to note that regarding notice and voluntary proceeding that Oklahoma is a shining example of how notice in voluntary proceedings works and protects both the confidentiality and anonymity of birth parent. By state law Oklahoma requires notice in voluntary proceedings to the tribe and has specific provisions of how to protect the confidentiality and anonymity of birth parent.

Finally on that issue I would like to state that in those state - in this country a parent's preference is still the determining factor for voluntary placement of a child. Any time any child anywhere in the United States is placed there are statutes regarding the best interest of the child as well as the safety and security concerns for the child that dictate that placement. ICWA is simply an

additional statute that applies in all 50 states when we're talking about the placement of Indian children.

Again, we thank the BIA for their hard work. We wholeheartedly support the regulations and we will be submitting further written comments.

Thank you.

Larry Roberts: Thank you.

Coordinator: Next comment from (Jeanne Tate).

(Jeanne Tate): Hello. My name is (Jeanne Tate) and I am a Florida attorney practicing in the child welfare area for now over 30 years. I'm a board-certified adoption attorney and I've been recognized by Congress for my contributions in this arena. I've been very active on a statewide and national level advocating for good laws to protect children.

I vehemently oppose the proposed regulations because they trample a birth parent's constitutional right to determine the care, custody, and management of their children. And in addition, the regulations hurt Indian children by denying them due process by failing to consider their best interest.

The proposed regulations would limit expert testimony and ban the consideration of attachment and bonding issues from the court's consideration of good cause to the placement preferences that are governed by ICWA. This not only conflicts with ICWA, but it should be a dire warning to anyone that would consider endorsing regulations that fail to consider a child's best interest.

ICWA's legislative history explicitly states that the use of the word good cause was designed to provide state courts with the flexibility in determining the disposition placement proceedings involving Indian children. And children have that substantive due process right to consider their best interest.

The proposed regulations limit this evidence and the factors that state courts may consider and I think unconstitutionally burden this critical liberty interest.

These regulations also trample a birth parent's fundamental constitutional right as recognized by the United States Supreme Court to determine what is best for their own children. And the expected outcome of these regulations which has already started is protracted litigation in the cases involving Indian children. And shame on anyone who would welcome such an outcome for children where their permanency and stability hang in balance for years and years and years.

The proposed regulations in my mind can be improved by withdrawing them. This orchestrated attempt to elevate the tribe's rights over all other interested parties is a matter that must be left to congress.

I appreciate very much the opportunity to speak today. Thank you.

Larry Roberts: Thank you.

Coordinator: Next comment from (Bryan Whitmire). Your line is open.

(Bryan Whitmire): Thank you for taking time - your time for comment. I'm a practicing attorney in Alabama, Alabama. I've been practicing for 42 years and I've done quite a few adoptions. I worked on the Alabama Adoption Code.

We spent a great deal of time trying to get the best interest of the child (related) into our code as well as the (uniform parent to check). This would take us back. Best interest is (unintelligible) an adoption. It should (all resonate).

Without allowing the experts to testify as to attachment, other areas of a child's welfare is going to harm the child's ability to be treated fairly. The confidentiality that is being destroyed with these statutes or regulations are going to hurt our state. As well we have consents in Alabama that are signed by the birth parents. And those exact consents we give the birth parent an option to have their file opened when the child reaches 19. They have yes or no check marks. This we do away with that, the confidentiality is gone.

We believe that this is detrimental to the children of our state and it would harm other children throughout the United States and our hope that the guidelines and the regulations that you are putting together would be rethought, that the experts with attachment be able to testify and present more evidence to you so that we can make sure these children's rights are not trampled upon.

Thank you for your time.

Larry Roberts: Thank you.

Coordinator: Next comment from (Stephanie Benadette).

(Stephanie Benadette): Good afternoon. Thank you for the opportunity to voice my opposition for the proposed regulation. I'm an adoption attorney in the state of Michigan. I'm the Chair of the Adoption Subcommittee of the State Bar of

Michigan Family Law Section and I have worked successfully with the Michigan Legislature making changes to the Michigan Adoption Code.

And I'm calling today specifically to state my opposition to the proposed regulations because of the process that the BIA has used in promulgating these regulations (unintelligible) addressing and in the restructuring of the public comment hearing.

And I won't go through in details as I certainly have heard many callers before me issue some of the same concerns and I adapt to their comments in opposition to the regulations.

But one of my concerns about the drafting is that the BIA consulted only tribal governments and Indian organizations while drafting these proposed rules and did not consult with any national child welfare organizations despite of the fact that they're promulgating or attempting to promulgate a child welfare law.

I'm also bothered by the fact that on the East Coast of the United States or (unintelligible) of the United States we have not had an opportunity for public comments because the BIA has set up all of the public hearings on the lesser and half of the United States.

Thank you very much for the opportunity to voice my opposition today.

Larry Roberts: Thank you for participating in the call today.

Coordinator: Next comment from (Jessica Monday).

(Jessica Monday): Hi, my name is (Jessica Monday). I'm joining this call today as a concerned United States citizen and a child rights advocate.

My first experience with ICWA came three years ago when I watched as my best friend's daughter was unwillingly and physically pulled from their arms. That moment led to 18 months of living hell not only for her adoptive parents but for her birth family and many friends and extended family members.

Thankfully this little girl was home, very happy and thriving, and both families are healing and focused on what's best for her. That being said, since that time I've spoken to more families than I can count whose lives are being unnecessarily ripped apart because of (ICWA) -- both native and non-native adopted families and birth families.

Having reviewed the BIA as proposed legislation, I oppose the regulations because they're flawed and would harm Indian children because the BIA has developed them without critical input from child welfare experts and organizations.

The effect of the department's failure to invite and consider advice from child welfare organizations nationwide in drafting of the proposed regulations is apparent in one, restrictive and unauthorized limitation on expert testimony that a court would be allowed to consider, and two, that direction that state courts must ignore the child's bonding and attachment.

Those restrictions would have a profound negative effect on children. They would exclude the testimony of otherwise available, qualified experts in the area of child development -- the very experts who could best assist courts with their insight into a child's basic needs, development, and well-being, and lead in many cases to the cruel and unnecessary breaking of bonds and attachment that have formed between the child and their caretaker. This would result in permanent and disastrous consequences for children.

Unless the proposed regulations are reconsidered in the light of advice from a broad selection of child welfare experts, Indian children and potentially non-Indian children will pay a steep price for the Department's folly in regulating child welfare without first making a serious effort to understand how its actions would affect them.

I would recommend that you extend your feedback period and set up a series of meetings in Washington DC to sit down with the very organizations and professionals who represent those who will be impacted by the implementation of these rules so that any changes made to the law are made fairly and in a just manner.

The BIA cannot and should not ignore the fact that ICWA affects not only Native Americans, but non-Native Americans as well.

Thank you for your consideration and opportunity to oppose the regulations today.

Man 1: Thank you.

Coordinator: Next comment from Megan Lestino.

Megan Lestino: Hi this is Megan Lestino with the National Council for Adoption. We represent all individuals impacted by adoption, prioritizing first the best interests of children, but also insuring that we honor the rights and impact on birth parents and adoptive families.

We are very concerned and opposed to these new guidelines and further opposed to their becoming regulations. Specifically, we think that the

provisions are beyond the scope of the Indian Child Welfare Act's original intent -- in some places in direct conflict with ICWA. They may at times violate (unintelligible) the Constitution and they're unsupported by the legislative history of ICWA.

There's also 35 years of case law to be considered that is many times in disagreement with what has been suggested here.

I'd like to say that we are not opposed to the Indian Child Welfare Act as it was originally intended. It did good work to remediate the inappropriate removal of children from their culture. We don't believe that the guidelines as written do that. We believe it could be very harmful, both to children and to the privacy and rights of birth parents.

As many of my colleagues from the American Academy Adoption Attorneys and others have mentioned previously, there are extraordinary concerns with the fact that the new guidelines say extraordinary physical or emotional needs of the child are all that may be concerned and ordinary bonding or attachment is not to be concerned or considered good cause.

As many have expressed before, attachment and bonding is developmentally crucial to children. It's not something that simply takes time to rebuild when it is destroyed. Its destruction results in significant trauma, including physical, emotional, and cognitive delays -- which can be permanent and irreparable in some cases.

We're also concerned that involuntary placements -- as opposed to the very specific language in ICWA regarding involuntary placements -- the guidelines completely eviscerate an individual's constitutional right to privacy and anonymity.

Although ICWA recognizes and honors those rights, these guidelines, requirement for mandatory notice, and blind adherence to following the placement preferences are contrary to the underlying and enabling statute and violate constitutional rights as well as ICWA itself.

We object to the current version of the guidelines, their publication to become federal regulations, and we do so based on the content of the guidelines themselves and the process by which they were developed. We hope that you'll withdraw these guidelines, they will not be turned into regulations, and that you'll include the broader child welfare community and the tribal community to sit down together, because we all sincerely have the best interests of Indian children at mind. Thanks.

Man 1: Thank you.

Coordinator: The comment from (Courtney Spoza).

(Courtney Spoza): Thank you for the opportunity to speak. I am a concerned citizen. I oppose the proposed regulations because they would harm women and children by placing an unauthorized and unconstitutional burden on the mother's right to privacy.

The proposed regulations conflict with ICWA and would place an unconstitutional burden on the right to privacy of women who believe that their best choice is to make voluntary placements of their children for adoption.

In 1979, the BIA said that under ICWA, confidentiality is given a much higher priority in voluntary proceedings than in involuntary ones. And the Act

mandates a tribal right of notice in intervention and involuntary proceedings, but not in voluntary ones.

For voluntary placements, however, the act specifically directs state courts to respect parental requests for confidentiality.

The proposed regulations would create a de facto notice requirement in voluntary proceedings by requiring that tribes and family members be informed about voluntary proceedings for the purpose of enforcing ICWA's place of preferences.

This is a cynical attempt to do indirectly what the BIA cannot do directly. The proposed regulations are in direct violation of an individual's right to privacy and due process and are contrary to the language, intent, and purpose of ICWA.

Under the proposed regulations, children who need to be placed for adoption would not be adopted because parents would be forced into a choice between doing what they believe is best for their children, and preserving their constitutionally protected privacy and anonymity. The proposed regulations should be withdrawn. Thank you for your time.

Man 1: Thank you.

Coordinator: The next comment from (Richard Maseus).

(Richard Maseus): Hi thank you and good afternoon. My name is (Richard Maseus). I'm an attorney practicing for over 25 years in the areas involving children, welfare, and especially adoption law.

I'll say from the outset, generally I support the efforts that the ICWA provides for intact Indian families. I do not support the adverse effects that the proposed guidelines would place on voluntary placements. These proposed guidelines seek to silence the wishes and usurp the rights of a parent seeking to determine what he or she believes in the best interest of their respective children.

I'm particularly concerned about how the ICWA guidelines, or these new BIA guidelines, would be on non-Indian parents -- particularly mothers who do not lose their constitutional rights simply because she may be carrying a child that may be eligible for tribal membership.

I don't mean to pick on (Gina Jackson) but she's the one who presented that with respect to the voluntary placements. And it seems to me, just being a practical guy -- and I don't need to repeat all of the comments we heard before -- but ICWA was designed to be a shield to protect Indian families.

The proposed guidelines would make ICWA a sword to invade other families and further tribal interest as opposed to the best interests of the children -- and certainly not the interest of parents.

One other caller said something before and said something about balance. These guidelines would totally make it all out of balance and not consider the rights of biological parents. Even the speaker or the caller who was from the Cherokee tribe in quoting ICWA, talked about the removal of Indian children, you know. We're all for that, or I would imagine most people are. But I also would imagine there's not going to be hardly anybody who is a listener or a caller who says that these guidelines usurp the rights of a biological mother's choice. And that's what they do.

So I would be opposed to the guidelines as written with respect -- and I'm limiting my comments to those voluntary placements, particularly those -- how it affects non-Indian parents. Thank you for your opportunity.

Man 1: Thank you.

Coordinator: Next comment from (Jenny Sullivan).

(Jenny Sullivan): Hi my name is (Jenny Sullivan) and I'm the Administrative Director for the American Academy of Adoption Attorneys and have worked in an adoption law firm for 21 years.

I too oppose the proposed regulations because Congress did not give the BIA the authority to adopt sweeping ICWA regulations. The proposed ICWA regulations should be withdrawn because they are not authorized by ICWA.

BIA itself said that nothing in the language of legislative history of the rules and regulations provisions of ICWA compels the conclusion that Congress intended to vest the Department of the Interior with such extraordinary power as to promulgate regulations with binding legislative effect with respect to all provisions of ICWA.

The legislative history of ICWA hasn't changed since 1979. The Bureau of Indian Affairs did not have the authority to promulgate the proposed regulations in 1979, and it does not have the authority to do so now.

Congress did not give the department the power to control state courts because that would violate the Constitution's fundamental concepts of Federalism.

So for these reasons and others already stated, I oppose the proposed regulations. Thank you.

Man 1: Thank you.

Coordinator: Next comment from (Taylor Goodale).

(Taylor Goodale): Yes thank you for the opportunity to speak today. My name's (Taylor Goodale) as she said. I am a practicing adoption attorney and I also practice in the juvenile courts.

I would like to point out a couple of things that I have concerns. First of all, I will echo a lot of what is already said and hopefully not repeat that.

However, I have a couple of concerns. One, this is not balanced. I think it fails to protect the best interests of children. The moderator previously requested what a definition of "best interest" is, and while I cringe at the idea of the federal government trying to put a blanket definition of best interests on individual children, I think that belongs to the state courts.

Some things that I would suggest in an evaluation of those interests would be the child's emotional and physical needs, including the age of the child and what those needs may be, the birth parent's wishes, the child's wishes where applicable if the child is old enough, and the tribal relationship, including past and present contacts with the tribe.

I think what this does is it immediately places a tenuous relationship with the tribe just in bloodline ahead of all other needs of the child.

Secondly, my main - large concern of mine is this fails to account for birth parent privacy. And again, you've heard the arguments for and against that. One thing that I'll point out is the federal government specifically has a long history of pushing for rights to privacy, specifically with regards to women's rights and reproductive rights. By now are we changing that for one specific subset of people, why are we not taking into account the need for these birth parents' rights?

As a practicing attorney, I will tell you that sometimes I struggle with ICWA and I certainly would not mind some regulations which help set out and better define what it is that we are supposed to do sometimes when these cases come along.

I'm in Missouri. We don't have a ton of ICWA cases here. But I think the interests of the children, the interests of the tribes, and the interests of the birth parents could be better served by having a more thorough writing of the law -- one where everyone is included. And as I read it, the federal government and specifically the Bureau of Indian Affairs and some tribes got together and decided what they think would be best for them and left everybody out of the consideration. And I just don't think that's a good way to write law.

So I am opposed to this and my partner, (Dan Bisher), who's been practicing in adoption since 1972 is here with me and he echoes my concerns.

Man 1: Thank you for participating today.

(Taylor Goodale): Thank you.

Coordinator: Next comment from (Jessie Archibald).

(Jessie Archibald): Hello, my name is (Jessie Archibald). I am the Indian Child Welfare Act Attorney for the Sitka tribe of Alaska.

First of all, I would like to respectfully note that 90% of the persons online that are opposing these new guidelines and regulations are adoption attorneys. So I just would like to say that is very interesting.

However, my position is that after 37 years of state courts interpreting ICWA, there has not been in the state of Alaska a substantial improvement in the initial problem. Indian children -- especially Alaska native children -- continue to be removed from their homes at alarming rates and are continuing to be adopted by non-Native families.

For example, in the state of Alaska, 70% of children in the state foster care system are Alaska native, yet Alaska natives represent only 12 to 14% of the general population in Alaska.

So although ICWA was enacted in 1978, 37 years ago, things have not improved much in the state of Alaska for Alaska native families and children.

These guidelines are absolutely critical and necessary to implement the intent and purpose of the Indian Child Welfare Act that has not happened yet and it's time and it's long overdue.

And one last comment is I especially support the provision of eliminating the existing family doctrine. Doing this as well as - would prevent state courts from using state family law rules to essentially overrule the intent and purpose of the Indian Child Welfare Act. This has been going on too long and it needs to stop.

And I thank the BIA for implementing these new guidelines and regulations and thank you for your consideration and opportunity to comment.

Man 1: Thank you.

Coordinator: The next comment comes from (Paula Pitaffio). Your line is open.

(Paula Pitaffio): Yes this is (Paula Pitaffio). And I'm calling in opposed to the proposed legislations because they would hurt Indian foster children by denying them due process.

The proposed regulation would limit expert testimony and ban the consideration of attachment and bonding issues from the court's consideration of good cause to placement preferences covered by ICWA.

This conflicts with the Indian child's right to due process and it conflicts with ICWA. It was legislative history explicitly states that the use of the term "good cause" was designed to provide state courts with flexibility in determining the disposition of placement proceedings involving Indian children.

The proposed regulations are in error and should be withdrawn. Thank you.

Man 1: Thank you.

Coordinator: The next comment comes from (Abigail Diggins). Your line is open.

(Abigail Diggins): Thank you. My name is (Abigail Diggins). I'm an adoption attorney in Maine. I've been practicing for just about 20, 25 years or so.

I too oppose the proposed regulations for several reasons. But I'll just outline one. Primarily because they are flawed, I believe, and they would harm Indian children because the BIA developed them without critical input from child welfare experts and organizations.

The effect of the department's failure to invite and consider advice from child welfare organizations nationwide in drafting the proposed regulations is apparent in the restrictive and unauthorized limitations on expert testimony that a court would be allowed to consider and the direction that state courts must ignore the child's bonding and attachment.

Those restrictions would have a profound negative effect on foster children. The would exclude the testimony of otherwise available, qualified experts in the area of child development -- the very experts who could best assist courts with their insights into a child's basic needs, development, and well-being. And it would lead in many cases to cruel and unnecessary breaking of bonds of attachment that have formed between children and their caretakers.

This would result in permanent and disastrous consequences for children.

Unless the proposed regulations are reconsidered in the light of advice from a broad selection of child welfare experts, Indian children will pay a steep price for the department's folly in regulating child welfare without first making a serious effort to understand how its actions would affect them.

Thanks very much for letting me comment today.

Man 1: Thank you.

Coordinator: The next comment comes from (Mark McDerma). Your line is open.

(Mark McDerma): Hello. Thank you for letting me speak today. I'm an adoption attorney in Washington DC, Fellow of the American Academy of Adoption Attorneys, licensed to practice law in California, Indiana, DC, Maryland, and Virginia.

And I oppose the proposed regulations because they are flawed and they would harm Indian children because the BIA developed them without critical input from child welfare experts and organizations.

The effect of the department's failure to invite and consider advice from child welfare organizations on a nationwide basis in the drafting process is apparent because of the restrictive and unauthorized limitations on expert testimony that a court would be allowed to consider. And then also the direction that state courts must ignore the child's bonding and attachment.

Those restrictions would have a profound negative effect on foster children because they would exclude the testimony of otherwise available, qualified experts in the area of child development -- these people who are the very experts, who could best assist courts with their insight into a child's basic needs, development, and well-being.

But also in many cases lead to cruel and unusual breaking of bonds of attachment that have formed between children and their caretakers. This would result in permanent and disastrous consequences for children.

Unless the proposed regulations are reconsidered in light of advice from a broad selection of child welfare experts, Indian children will pay a steep price for the department's folly in regulating child welfare without first making a serious effort to understand how its actions would affect them.

Thank you for listening.

Man 1: Thank you.

Coordinator: The next comment comes from (Denise Siddleman). Your line is open.

(Denise Siddleman): Hi. My name is (Denise Siddleman) and I'm an attorney licensed to practice in New York. I've been concentrating my practice in the area of adoption law for approximately 20 years.

And for the reasons that were previously stated, I also oppose the proposed regulation.

I wanted to reflect just briefly on the issue of the confidentiality and the birth mother's right to privacy. I've represented hundreds of birth parents making voluntary placement decisions and in a voluntary adoptive placement, the birth parent is making a decision which they feel is best for their child.

However, many times birth parents making that decision confront derision from family and friends who don't understand that choice and accuse the placing parent of not caring about their children or abandoning their child.

Those in the adoption field know that's not the case, and that the decision to place a child privately is a decision made out of love and the belief that the placement is in the best interest of the child.

However, because of the hostility that many birth parents confront when making an adoption plan, they feel very strongly that their decision to place their child should be kept private.

And for that reason, and for all of the other reasons that were stated previously in opposition to the regulations, I would oppose the proposed regulation, because they would harm children and women, and place an unauthorized and unconstitutional burden on a mother's right to privacy.

I also support the comments that were made previously which talk about there was an intention in the original act to give greater (unintelligible) confidentiality and privacy in the context of the voluntary placement.

So again, I oppose the proposed regulations and I believe they should be withdrawn for all of the detailed reasons given by the previous commentators. Thank you very much.

Man 1: Thank you.

Coordinator: The next comment comes from (Nina Rumble). Your line is open.

(Nina Rumble): I am an attorney, practicing in the field of adoption law. I've been admitted in the states of New York and New Jersey. And in the course of over 20 years of representing adoptive parents and placing parents in primary voluntary adoptions, I believe that the proposed regulations are in error and should be withdrawn -- specifically the guidelines are overbroad to affect the legitimate legislative purposes of the Indian Child Welfare Act, specifically with regard to voluntary placements.

The proposed regulations eviscerate a parent's rights to privacy and a parent's fundamental or the fundamental right of a parent to plan for their child.

The proposed regulations make no distinction between state action and individual choice, which I believe, you know, squarely puts these regulations

in a place that would create a constitutional challenge with regard to the rights of the individual.

They also deprive the Indian child of due process by substituting the BIA's judgement for a state court's judgement with regard to the best interest of the child.

The proposed regulations that predetermine the question of good cause in most cases by imposing limitations on both expert testimony and the consideration of attachment and bonding issues undermine the key concept of the best interests of the child and usurp the (unintelligible) is traditionally the authority of a state court to act in the best interests of the specific child that is before the court.

For this and all of the other reasons stated by the commentators who opposed the regulations, I request the bureau to reconsider, to withdraw the regulations, to take more considered testimony from various stakeholders in this process and to rework the regulations in a fair way. Thank you.

Man 1: Thank you. Operator, before we go to the caller, it looks like we have a handful of people in queue. For those that may have joined the call late, can you just provide the information that they utilize to get in the queue if they have a comment?

Coordinator: Absolutely. If you would like to make a comment, you can press star 1 and record your name at the prompt. Again, if you would like to make a comment, please press star 1.

Our next comment...

Man 1: And I would just ask that if you've already made a comment, if we can get through the folks that haven't made a comment yet and give them an opportunity that would be appreciated. And then we'll open it up for additional comments.

Coordinator: And the next comment comes from (Lynn Bodey). Your line is open.

(Lynn Bodey): Thank you. Let me introduce myself. My name is (Lynn Bodey). I am from Wisconsin. I am an adoption attorney. More importantly, I'm a mother. I'm also an adoption agency owner and I haven't -- at least in the 53 minutes I've been listening -- I haven't heard anything from adoption agencies.

I have to tell you one thing that my agency takes very seriously is compliance with ICWA, and we work really hard to make sure that where appropriate tribes are brought in, where mothers -- usually mothers -- want privacy, we respect that privacy.

But I am opposing the proposed regulations. I think they would hurt children. I should've said I've been representing children, parents, foster parents, grandparents, relatives, and agencies for way more than 20 years. My first case involving children was an ICWA case.

I'm concerned that the guidelines and the regulations have been harmed by lack of stakeholder involvement. I didn't even realize that the geographic lack of involvement was so great, but it is.

One of the earlier callers noted that it was interesting, she said, that many opposing the rules are adoption attorneys. I don't think that's surprising at all. We do this work because we want to promote the best interests of children. We spend our days watching families and seeing how they are affected by

various rules, statutes, and regulations. And we get to know the parents and families. We want things to work for them.

I also agree with the earlier caller who noted two significant problems, and then I'm going to add one. One is the limitation on expert testimony and ignoring the effect of attachment and bonding. Most are concerned about the effect on parents of Indian children who are trying to make decisions in the best interests of their own children, as parents have a right to do.

So when we look at expert testimony and consideration of attachment and bonding issues, frankly any rules or regulations that take that out of the play do a great disservice to children. Children who are harmed, who have attachments broken, gave attachments that are not respected, I've had psychologists testify in court that ignoring or damaging those attachments can be worse for children than physical or sexual abuse.

So I think that if we have expert testimony available from qualified individuals with the foundation to render opinions on those issues, why would we not want to consider that in the mix? We should not be limiting those folks and unnecessarily limiting the information available to a court in a particular case.

Finally, children have a (substantive) due process right to have custody of determination is affecting them based on their best interests. To the extent that the proposed regulations limit evidence and factors that state courts can consider, that would cause an unconstitutional burden on this crucial liberty interest which should be enjoyed by all children -- not just non-Indian children.

And that brings me to concern --- the proposed regulations conflict with an Indian child's right to due process and it treats them differently and in fact worse than other children. I don't think that's the goal, to treat Indian children subpar to non-Indian children.

The regulations also conflict with an Indian parent's right to make decisions. It imposes burdens on those parents that are not imposed on non-Indian children and parents.

So I do think we have to respect an Indian parent or a parent of an Indian child who wants to make a choice of adoption, if that's what they want for their child. We should not be probably getting regulations that throw road blocks in the way of parents trying to make those privacy - those parenting decisions, and who want to make those parenting decisions in the privacy of their own heart and soul.

Once any parent elects adoption, we should try to support that decision.

I heard one of my colleagues from Wisconsin earlier mention about encouraging cultural involvement. I've had the same experience she has, where Indian children adopted into non-Indian homes have been able to take advantage of their Indian culture because of the involvement of their new parents.

Encouraging that sort of cultural involvement while protecting Indian parents' privacy and rights to make parenting decisions on their own would be a far better way to do this. It might seem harder, but I think if our goal is to enhance the position of all children -- not just non-Indian children and not just Indian children -- then that's what we should do.

So I would register my objection to the proposed regulations and ask that they be withdrawn. Thank you for your time.

Man 1: Thank you. Thank you for participating today.

Coordinator: The next comment comes from (Heather Strickland). Your line is open.

(Heather Strickland): Good afternoon. My name is (Heather Strickland) and I am an adoption attorney in Arizona. A large portion of my practice is the adoption of children who are coming from the child welfare system.

I oppose the proposed regulations today because the process by which the BIA seeks to impose both the guidelines and the proposed regulations is fundamentally flawed and unfortunately detrimental to children.

It appears that the BIA only consulted tribal governments and Indian organizations in advance of drafting both the guidelines and the proposed regulations. Even though both of these guideline and regulations would affect non-Indian parents and children who are only possibly Indian children.

The BIA, which has no expertise in child welfare issues, failed to seek assistance from national child welfare organization and experts, even though it was drafting a child welfare rule. I think that's very clear in the fact that the BIA drafted regulations trying to regulate who can be an expert and what kind of evidence a court can listen to when deciding the best interests of a child.

It's because of the flaws in the process reaching these guidelines and the proposed regulations that the BIA should withdraw both the guidelines and the proposed regulations for proper reconsideration.

These guidelines would be helpful to courts if they were prepared in a way that involved all interested parties. Thank you for the opportunity to comment.

Man 1: Thank you.

Coordinator: The next comment comes from (Karen Foley). Your line is open.

(Karen Foley): Thank you. Yes, my name is (Karen Foley) and I'm an adoption attorney from New York. I've been practicing adoption law for approximately 12 years and I'm also an adoptive parent.

I oppose the proposed regulations because they would hurt parents and children by denying parents their due process. The proposed regulations would place an unconstitutional burden on the fundamental right of parents to make decisions regarding the care, custody, and control of their children in voluntary adoptive placements.

The proposed regulations limit parental choice by requiring the participation of and by necessary implication notice to tribes and extended families of parents in placement decisions and by devaluing parental preferences in the choice of placement resources and determinations of good cause to deviate from ICWA placement preferences.

These proposed regulations tell parents of children who are or even may possibly be Indian children that deciding to make a voluntary placement for adoption means losing their fundamental right to privacy and anonymity with resulting possible ostracism, shunning, and a myriad of other negative consequences and their fundamental and constitutionally protected right to make a decision regarding the care, custody, and control of their children

based on the determination of their child's best interest and possibility of continued birth family contact.

This conflicts with the language and intent of ICWA. Based upon this, I believe the proposed regulations should therefore be withdrawn. And I also join in the previous comments made by the other people. Thank you.

Man 1: Thank you.

Coordinator: The next comment comes from (Kevin Harrigan). Your line is open.

(Kevin Harrigan): Good afternoon. I'm an adoption attorney and I practice in upstate New York and I've been representing parents and children for over 25 years. And I've been very privileged to represent parents in adoption agencies in matters that involved Indian children throughout those 25 years.

I'll be very brief and I just want to say that today I oppose the proposed regulations which the Bureau of Indian Affairs seeks to impose and I do that because I believe that the Bureau of Indian Affairs, which has no expertise as far as I understand and research, no expertise in child welfare issues.

And while they have no expertise, they've failed -- it seems to me -- to seek assistance of any national child welfare organizations and experts, even though what the Bureau of Indian Affairs was doing was drafting the child welfare rule.

And it seems to me that the Bureau of Indian Affairs has attempted to limit also public comment from citizens living in the Eastern United States by only scheduling public comment hearings west of the Mississippi.

That's all I have to say. Thank you very much.

Man 1: Ok thank you for participating today.

Coordinator: The next comment comes from (Plessa Wilson). Your line is open.

(Plessa Wilson): Hi. I am enrolled (unintelligible) and I'm not going to talk about the process of changing the regs. But I want to point out some social issues here that are really important. And they pretty much focus on the bonding issue.

Now, ICWA I think is correct in wanting to have Indian children in their own culture, but let's face it -- foster care, there's not enough Indian homes to put these kids when they go into foster care. There's not enough for any kids in foster care and we know that.

So you get these kids put into a home that's non-Indian so they can survive and there's bonding going on. And if this bonding is very, very good, it is important for the child. Three years later, you cannot jerk them out of that home and put them in a new home.

It's in the science of bonding. The new way these regs are written, I'm shocked really that they would overlook the science that has been around for so many years about bonding. And, you know, there's plenty of ways to get around the fact that these kids might have to go into a non-Indian home for their own welfare. There's plenty of ability for them to have contact with the tribes. The parents are usually very willing to do that.

And until the tribes are capable of, you know, having enough homes, they cannot get so (exorcized) about, you know, the fact that these kids aren't

going into Indian homes. They're not going into homes not because ICWA's wrong. It's because those homes are not available to them.

And that's just my opinion. But I think you could probably look it up and you could probably, you know, find some basis for that.

So I agree with ICWA. I think their (unintelligible) is here and the bonding issues I cannot imagine would ever holdup on court in any way. You know, the science is just too strong. So you need to relook at this. And thank you.

Man 1: Thank you.

Coordinator: The next comment comes from (Cindy Bench). Your line is open.

(Cindy Bench): Thank you. My name is (Cindy Bench). I'm an adoption attorney licensed to practice in Missouri, Texas, and Virginia and I've represented adoptive parents, birth parents, and children as guardian (unintelligible) in adoptions. And I want to thank you for this opportunity to register my comment.

I'm opposed to the proposed regulations for a number of reasons, and many of those were advanced by previous callers. But I'll limit my comment to a concern that has been raised by previous callers regarding the fact that these regs would deny Indian foster children due process of law.

And I think it's a basic premise of our court system that all relevant and probative evidence presented to a fact finder is what informs and determines outcome hopefully. And it concerns me as a trial attorney that the proposed regulations would limit expert testimony and ban the fact finder from considering attachment and bonding issues in determining whether or not good cause exists to deviate from the placement preferences.

This is in conflict with Indian children's rights to due process and it can only be seen as an attempt to stack the deck on outcome rather than allowing all of the relevant probative evidence that is available to inform and determine the outcome.

ICWA's legislative history explicitly states that the use of the term "good cause" was designed to provide state courts with flexibility in determining the disposition in placement proceedings and these regs restrict this flexibility and judicial discretion in direct contravention -- excuse me -- of the legislative intent.

And in this regard, the regs are similar to the legislative experiment in criminal law with mandatory minimums in sentencing. The justification for those minimums was also to bring uniformity and reduce of disparate treatment among offenders. And I think that these mandatory minimums are now almost universally seen as a failure for the very reason that they removed judicial discretion in making sentencing decisions and made certain evidence that was arguably relevant irrelevant to these determinations that - and this led to unfair and actually ludicrous outcomes.

All children have a (substantive) due process right to have custody determinations affecting them based on their best interest. The proposed regs limits on evidence and factors that state courts may consider would unconstitutionally burden this due process right. And it also raises serious equal protection concerns between Indian and non-Indian children.

For these reasons, for all of the reasons advanced by previous callers, I believe that the proposed regs are in error and should be withdrawn. Thank you.

Man 1: Thank you.

Coordinator: The next comment comes from (Megan Montseur). Your line is open.

(Megan Montseur): Good afternoon. My name is (Megan Montseur). I'm an adoption attorney in Kansas. And I also represent adoptive couples and birth parents and I also represent foster families.

And I want to comment just on a few things, but also echo my colleague's comments as to their opposition and all of the reasons that have been already been stated.

But first I'll speak to the fact that I oppose the proposed regulations because Congress did not give the BIA the authority to adopt sweeping ICWA regulations. The proposed ICWA regulations should be withdrawn because they're not authorized by ICWA.

The legislative history of ICWA hasn't changed since 1979. BIA did not have the authority to promulgate the proposed regulations in 1979 and it does not have the authority now. Congress did not give the department the power to control state courts, because that would violate the Constitution's fundamental concept of Federalism.

In addition to that, I did just want to comment a few things regarding my work in the foster care system and my experience with foster families. I think two callers ago mentioned very well the concern as to the science behind attachment and what taking that consideration out of foster -- in Kansas we call it child (unintelligible) care case -- taking that consideration out when you are determining what is in the best interests of the child.

Attachment, as she said, the science has been so clear and I have been so blessed to know and get to know so many foster families who have brought this to my attention. I've read articles and done research. And it is unequivocally known that that is something that - if an attachment disruption occurs, which most of the children in this scenario that we're discussing have already suffered one attachment disruption.

And as she eloquently said, they're forced to be placed in another home. In Kansas, I would agree that they're placed in a foster home before knowing all the details of ICWA, if there's a family. And I represent families where the child is sometimes there for two to three years. And to not consider that attachment disruption is wholly offensive to I think all of us and what my colleagues have stated is that we are doing what we do because we care about the welfare of children.

And I would point out that I think all of us support the Indian Child Welfare Act. But the way this has been done for all of these reasons stated, as my colleagues have done -- and specifically the bonding and attachment I find just very, very concerning that once you take away what is in the best interests of kids, which is so important to look at attachment disruption, then you are losing the whole goal of the Indian Child Welfare Act.

And I will finally end just by saying -- someone also said this but I would just agree and echo the fact that -- I have clients who may not have the blood quantum or they're not enrolled or they're not quote Indian, but they have been the ones to immerse themselves in the culture. And I have clients that have driven down, you know, four hours to the tribe to take the child to be involved with their culture and heritage -- even more so I would dare -- at times, obviously not always -- but more so than a biological family member that would meet the criteria of the first place of preference.

So I think , you know, I appreciate BIA trying to make it more - to improve it, but this is not the way and I feel like we're kind of missing the goal and the purpose of ICWA. And I appreciate the opportunity and I would also add that I've been doing this for eight years. I do work with a partner, (Martin Bower) who I speak for as well, who's been doing this he always reminds me longer than I've been alive -- so 33 years. So I think you and he would agree on my comments.

Man 1: Ok thank you.

Coordinator: The next comment comes from (Teresa Hardisy). Your line is open.

(Teresa Hardisy): Thank you. I'm calling in opposition to the regulations. I practiced law in Illinois for more than 35 years, retiring in 2013 after completing many thousands of voluntary independent adoptions.

Among those cases, there were quite a few mothers who identified as having Indian ancestry, which I always took care to address appropriate to the ICWA requirements. But many, if not all of them, had never had any contact with their tribe or even knew often specifically tribe their ancestors had belonged to. That was very common.

And 100% of them were all extremely concerned about confidentiality -- particularly with respect to their pregnancy, but also their decision to place a child for adoption. And understandably, they wanted to make that choice without the undue influence of family members who may want to interfere with that plan.

So I oppose the proposed regulations for many reasons, but the primary reason is that they would harm women and children by placing an unauthorized and unconstitutional burden on the mother's right to privacy, because women who believe that their best choice is to make voluntary placements of their children for adoption should have that right.

And in 1979, the BIA said that under ICWA, confidentiality is given a much higher priority in voluntary proceedings than in involuntary ones. And the Act mandates a tribal right of notice and intervention in involuntary proceedings, but not in voluntary ones.

For voluntary placements, however, the Act specifically directs state courts to respect parental requests for confidentiality. And these proposed regulations would create a de facto notice requirement now in voluntary proceedings because it would require that tribes and family members be informed about voluntary proceedings for the purpose of enforcing the placement preferences under ICWA.

I feel this is in direct violation of an individual's rights to privacy and due process, and contrary to the language, intent, and purpose of ICWA. Under the proposed regulations, children who need to be placed for adoption would not be adopted because parents would be forced into a choice between doing what they believe is best for their children and preserving their constitutionally protected privacy and anonymity.

The proposed regulations should be withdrawn and reworked in a fair way. Thank you very much for considering my comments.

Man 1: Thank you for participating today.

Coordinator: The next comment comes from (Connie Russo). Your line is open.

(Connie Russo): Hi. Thank you very much for taking my call. I'm (Connie Russo), a concerned private citizen and a supporter of the members of AAAA. I've been made aware of these proposed regulations and I oppose them very strongly.

I believe that they conflict with the ICWA and would place an unconstitutional burden on the right to privacy of women who believe that their best choice is to make voluntary placements of their children for adoption.

In 1979, the BIA said that under ICWA, confidentiality is given a much higher priority in voluntary proceedings than in involuntary ones. And the Act mandates a tribal right of notice and intervention in involuntary proceedings, but not in voluntary ones.

For voluntary placements, however, the Act specifically directs state courts to respect parental requests for confidentiality. What is being proposed by these regulations would create a de facto notice requirement in voluntary proceedings by requiring the tribes and family members be informed about voluntary proceedings for the purpose of enforcing ICWA's placement preferences.

The proposed regulations are in direct violation of an individual's right to privacy and due process and are contrary to the language, intent, and purpose of ICWA. Under the proposed regulations, children who need to be placed for adoption would not be adopted -- excuse me -- because parents would be forced into a choice between doing what they believe to be what's best for their children and preserving their constitutionally protected privacy and anonymity.

I care about the welfare of children and I strongly oppose the regulations and they should be withdrawn at this time. Thank you very much for allowing me to speak today.

Man 1: Thank you.

Operator The next comment comes from (Shawn King). Your line is open.

(Shawn King): Thank you. I would like to thank the BIA for taking the opportunity to welcome our comments. I'm (Shawn King). I'm the Executive Director of American Adoptions. We're one of the largest child placing agencies in the United States. I also serve as President of the Metropolitan Adoption Council, which represents about another dozen adoption agencies in Kansas and Missouri. And American Adoptions is also a member of the Florida Adoption Council, which is probably another 20 adoption agencies.

So to comment on the one caller that there's only adoption attorneys concerned or calling in on this issue, I guess I represent the other 10%.

Many of the adoption attorneys eloquently stated the various different legal reasons as to why they should oppose this. And while I completely agree we should oppose this, I wanted to share a little of my adoption story and ask the BIA what they would do if they were in my family's situation.

My daughter, who is three years old, was adopted around the same time as baby Veronica. So I paid very close attention to the baby Veronica case to make sure that we were compliant with ICWA with the help of the adoption attorneys. But at the same time, we were very concerned about the privacy

and the confidentiality of not only our birth mother -- who is non-native -- and our birth father -- who is native.

In our adoption, both of them are in their early 20s. Both of them decided to go and testify that they wanted an adoption plan and both of them did not want the tribe's involvement. They both chose adoption and we were successfully able to adopt our daughter, who is now three years old.

My question to the BIA is under these proposed guidelines, had they been enacted prior to the adoption of our daughter, we would have been unable to adopt a child. And while I understand that being concerned about an adoptive family's adoption journey may not be where their priorities lie, my question is why would they want a native and a non-native who wants to voluntarily choose adoption for a United States couple where they feel that's the best interest for their unborn child, why would they feel any tribe, who may or may not have the resources at home to adopt that child, why they think that would be the best interest of the child.

And then the question I would like to propose back is assuming these guidelines were to be enacted and assuming our birth parents, who continue to want their confidentiality and privacy intact, if they were to become pregnant again, under these guidelines, do they realize that potentially they would prevent a full sibling from being allowed to be adopted by my family and therefore causing our family to have the breakdown of the family culture and experience.

So I guess what I would ask for the BIA when they hopefully pull back the guidelines and relook at them is what my family would prefer to have, is access to resources and the ability to have cultural education on ICWA. And the adoption community actually has handled this before. Most of the

adoption attorneys and almost all of the adoption agencies are very familiar with Hague Accreditation Process, which almost all of us have had some level of involvement, requires at least ten hours of attachment education so that we can make sure that we're making not only the best interest for children but permanency for these kids are the most paramount, important thing to put in front of everything.

So I guess my question is, what would the BIA do for a family like me who is seeking and wanting resources of tribes as opposed to this type of regulation actually prevents us from even creating a dialogue to be able to even complete a family. Therefore will actually tear apart my family, should there be potentially a full sibling out there for my family.

Thank you for the opportunity to comment.

Man 1: Thank you for your comments today.

Coordinator: The next comment comes from (Jane Gorman). Your line is open.

(Jane Gorman): Thank you. I am an attorney in California and my practice is solely contested adoptions. I've worked with many tribes through my 30 years in this field. Most tribes in my experience have been cooperative in working together with the birth parents in finding suitable homes for children who have Native American ancestry. Some tribes, of course, oppose a mother's choice of a family to raise her child, even when the child has very little Native American heritage.

But, I oppose these proposed regulations because the state court system is working. ICWA's working. The court system's working. We have a pretty restrictive form of ICWA. We call it our mini ICWA in California. And the

court system here in California has been, for the most part, able to adequately deal with issues presented. Sometimes the courts rule in favor of the placement of Indian children with non-Indian families, sometimes not. And these are the cases I get. I'm not involved in placement, just in litigation.

But the courts are allowed to hear the evidence, listen to the witnesses, and do what the court finds is best for the child and avoid what the court feels are detrimental to the child. These regulations would tie the hands of the state courts.

The proposed regulations would take away the state court's power to protect Indian children and thus violate the constitutionally protected rights of these children. For example, section 23.131C3, which many callers have spoken about, would preclude a court from considering the child's attachment to its caretakers, even if he had been with them for an extended period of time.

And another section would require a finding that the child's continued custody with the child's parent or Indian custodian is likely to result in serious physical damage or harm to the child and provides any substance abuse or any non-conforming social behavior does not constitute the basis for such a finding.

These proposed guidelines would limit - would make adoptive placements of children much harder, would cause a chilling effect on adoption, would limit children's constitutional rights to stable placement, and would disenable courts from stopping placement of children in possibly unsafe homes with even unfit parents.

The ICWA is not broken. It's working. It's working in favor of tribes. It's working in favor of children. The proposed and unnecessary and overreaching

and I believe unconstitutional fix would cause irreparable harm to countless children and families. I oppose these proposed regulations and I appreciate the opportunity to speak. Thank you.

Man 1: Thank you.

Coordinator: The next comment comes from (Mary Beck). Your line is open.

(Mary Beck): Thank you for this opportunity to speak. I am a Clinical Professor of Law at Missouri University School of Law and I teach in the area of children's and birth parent's rights in adoption. I am a Fellow of the American Academy of Adoption Attorneys. And I co-wrote (unintelligible) brief in the US Supreme Court case Adoptive Couple vs. Baby Girl decided in 2013.

I've also written legislative bills for multiple states in Congress in the areas of birth parent and children's rights in adoption, as well as in the area of family violence. I oppose the proposed BIA guidelines and I specifically disagree with the testimony of my friend and colleague Professor (Kate Fort) as well as Miss (Nemo).

Justice Alito's opinion in Adoptive Couple vs. Baby Girl emphasized, using very strong idioms in his last paragraph, a warning that using ICWA trump cards at the 11th hour threatens violation of equal protection rights of children and birth mothers.

These proposed regulations attempt to skirt this country's highest court efforts to protect the rights of its citizens. And these guidelines are not even proposed guidelines. The guidelines are (non-abiding) and they give direction to state courts. These new guidelines are proposed of binding regulations. They would remove discretion of state courts to tailor situations to the facts of a case.

This is overreaching and I believe sabotages the very goals of the Indian Child Welfare Act to protect Indian children. ICWA was enacted in ’78 to protect the relationship between an Indian tribe and Indian children domiciled on the reservation. It was not enacted to ignore the physical and emotional needs of children.

The needs of children are enshrined in the Adoption and Safe Families Act, and in the Social Security Act section 471A15, such that priority in placement of abused and neglected children if a child’s health and safety. The proposed regulations would remove the best interests of children from consideration both by expressly taking out of good cause determination and for exception to placement preferences and by effectively eliminating it from testimony because it doesn’t allow those who are expert in child rearing except for those with Indian expertise.

This is a massive deviation from the former guidelines, which are working to protect Indian children. Best interest is a fundamental consideration of every child welfare decision and (unintelligible) it is encoded in our very first statute. I think the BIA proposed regulations are at odds not only with my state law but also with federal law.

Oklahoma has already ruled that the proposed guidelines overreach and undermine the best interests of children in a case decided May first of this year entitled (MKT CDT and FAL). And that court held that the proposed guidelines ignore the best interests of children.

I think these new guidelines that are proposed do sabotage the best interests of children and the Indian Child Welfare Act and threaten to engender so much

opposition that they will never be successful even if they were to become regulations.

I thank you for the opportunity to speak today.

Man 1: Thank you.

Coordinator: The next comment comes from (Tanya Dumas). Your line is open.

(Tanya Dumas): Thank you. My name is (Tanya Dumas) and I'm speaking as a concerned private citizen. Thank you for the opportunity to express my support of the proposed regulations. I appreciate the BIA's leaders and child welfare professionals who identified themselves at the beginning of this call for taking the time to listen to public comments today.

Despite the guidance promulgated and progress made through tribal state collaboration over the past 35 years, a wide range of inconsistent application exists and is seen in the news every day.

These proposed regulations implement uniform best practices for all state child welfare agencies, adoption agencies, and courts. The proposed regulations are especially helpful in that they explain the difference between active efforts and reasonable efforts. And I think that concerns about best interests being ignored seem very overstated, because first of all, best interests can still be considered -- just not where there was already non-compliance with the federal law. And second, if there is up front full compliance with active efforts and placement preferences, ICWA assures that the health, safety, and best interests of troubled children are being met.

Expert witnesses can still be used and there are, as Oklahoma illustrates, workable ways to balance notice requirements and confidentiality.

By the way, the assumptions about attachment theory and bonding that many have said are paramount are derived from studies of middle class, European, and Euro-American parents. Much of the traditional attachment research has often overlooked or downplayed the role of culture. Caution in using bonding and attachment as a basis for making decisions about the long-term well-being of Indian children has been confirmed by a study of resilience among American Indian adolescents, which found that for children who had been placed in foster care or adoptive placement, resilience was often a key quality that determines successful transition. The study found that the strongest predictor of higher (unintelligible) levels are resilience for American Indian adolescents with engagement with traditional culture.

In short, bonding research is not the panacea that some would characterize it as.

These proposed regulations help uphold the rights and best interests of Indian children, and I thank you for the opportunity to comment.

Man 1: Thank you.

Coordinator: As a reminder, if you would like to make a comment, please press *1 and record your name at the prompt. Again, to make a comment please press *1. One moment please for additional...

Man 1: So it looks like we have approximately 15 minutes left in the call today. So - and we don’t have anyone in queue. So we’re going to open up for anybody else that wants to make additional comments.

Coordinator: The next comment comes from (Patty Roth). Your line is open.

(Patty Roth): Yes I'm calling from the heart of Sioux Indian country in Ft. Thompson, South Dakota, the Crow Creek Sioux tribe. I have been ICWA Director off and on for 13 years. And I really like the comments from the people that are down in the trenches, like the lady from Alaska and the lady from Michigan, the Cherokee Nation. We know what's really going on.

And many times children from our tribe - BIA used to have a policy that children would be better off with white people in the east, and many of our children were adopted in the middle 50s and 60s and they came back to the tribes. They didn't know who they were. We had people committing suicide.

I am a white woman, yet I firmly believe that Indian children belong with Indian people. And there's so many attorneys with their concerns about Native women's rights and Native children's rights. What's that about? Attorneys get great fees for adopting children.

And Native American children have historically paid a deep price for the government's folly. Thirty-seven years ago ICWA was created in an attempt to prevent this. Various courts not understanding ICWA and the implementation and they haven't always complied with ICWA. It doesn't mean that ICWA's not a good thing. There's constant statements of the best interests of the child, but keep in mind that this is only based on a person's perception of the best interests. Are they thinking of the life-long impact with the placement of these children?

The birth parent's rights keep being stated. The child has rights too, and that includes a right to know their heritage, their relatives, their history. Non-

natives can never fully understand this. And like I said, we've had failed adoptions happen over and over again. In the past, people weren't told the children may be FAS. They didn't know about that. I personally had three white adoptive families contact me. They didn't want these children when they became teenagers because of the expenses and the things that happen to children that were FAS and FAE.

And then there's been a lot of mention of experts testifying on child development, but the key word missing is Indian expert. Thank you very much.

Man 1: Thank you.

Coordinator: The next comment comes from (Michelle Smith). Your line is open.

(Michelle Smith): Yes I'm an attorney in private practice in North Carolina. I've been practicing in the area of adoption law for over 20 years. And I'm calling to oppose the proposed law regulations because I believe they would harm women and children by placing an unauthorized and unconstitutional burden on a mother's right to privacy.

I believe that the proposed regulations conflict with ICWA and place an unconstitutional burden on the right to privacy of women who believe that their best choice is to make voluntary placements of their children for adoption.

You know, in 1979 the Bureau of Indian Affairs said that under ICWA, confidentiality is given a much higher priority in voluntary proceedings than in involuntary ones. And the Act mandates a Tribal Right of Notice and intervention in involuntary proceedings but not in voluntary ones.

For voluntary placement however, the Act specifically directs state courts to respect parental requests for confidentiality. The proposed regulations would create a de facto notice requirement in voluntary proceedings by requiring the tribes and family members be informed about voluntary proceedings for the purpose of enforcing ICWA's placing preferences.

I believe this is a cynical attempt to do indirectly what the BIA cannot do directly. The proposed regulations are in direct violation of an individual's right to privacy and due process. They're contrary to the language, intent, and purpose of ICWA. Under the proposed regulations, children who need to be placed for adoption would not be adopted because parents would be forced into choice between doing what they believe is best for their children and preserving their constitutionally protected privacy and anonymity.

So I believe that the proposed regulations should be withdrawn. Thank you.

Man 1: Thank you.

Coordinator: The next comment comes from (Joe Hudack). Your line is open.

(Joe Hudack): I thank the BIA for considering and listening to comments today. I'm currently a law student in my third year in California, and my wife and I are involved with foster care and have seen a lot of foster care issues.

One of the things that we're most concerned with is the attachment of children. We know how important it is firsthand. We've seen it in effect. We've seen the impact that it can have when there is no attachment and not the ability to have an attachment.

What we're concerned about is the new regulations treating every child who's eligible for membership in the tribe, regardless of whether the child identifies even Indian or not, the same and they do not allow courts to take into account each individual child's best interests. We believe that the best interests of the child should come first and foremost and should not be considered whether or not they are Indian or black or whatever the case may be.

We believe that the child should get the best emotional care they can get, and if that comes from the caregivers that are non-Tribal, non-Indian, we believe that should be a court's decision for the best interests of the child.

I want to thank you again, the BIA, for listening to our comments.

Man 1: Thank you.

Coordinator: The next comment comes from (Vanessa Cruztorlenke). Your line is open.

(Vanessa Cruztorlenke): Thank you for this opportunity. I am a citizen of the state of Oklahoma who watched in horror the vs. Veronica being played out locally and in the national media. Thank you for trying to close up loopholes because the courts have proven they make it up as they go. The vulnerable are at risk. I'm talking about mothers, children, and biological fathers. They are being preyed upon by the multi-billion dollar adoption and foster care system -- people who profit from these activities.

Dusten Brown was put through the gauntlet. He was shut up to set an example so that no one else would question or try to gain their children. Is this attachment disorder was a concern, they would have left his daughter with him. She had been with him two years.

When it takes 30 attorneys -- and it was documented, 30 attorneys working 24/7 against Dusten Brown, Veronica's biological father -- you know that ICWA is doing something right. ICWA sets the example for Native American children, which should be the example for all children.

Thank you for this opportunity. I support you highly and wish you much luck. Thank you.

Man 1: Thank you.

Coordinator: The next comment comes from (Sally Shully). Your line is open.

(Sally Shully): Hi and thanks. I'm with Open Adoption and Family Services in Portland, Oregon. And I oppose the proposed regulations because they would hurt Indian children by unlawfully interfering with the responsibilities of state courts.

ICWA's legislative history explicitly states that the use of the term "good cause" was designed to provide state courts with the flexibility in determining the disposition of a placement proceeding that involves an Indian child.

In 1979, the BIA said that noting in the legislative history of ICWA indicates that Congress intended the Interior Department to exercise control over state courts or to legislate for them with respect to Indian child custody matters.

And BIA further said that it would have been an extraordinary step for Congress to do so.

But nevertheless, the proposed regulations would predetermine the question of good cause in most cases by imposing limitations on both expert testimony

and the consideration of attachment and bonding issues, which we've heard several of here today. This would undermine the keystone concept of best interest of the child from the court's consideration in child welfare cases covered by ICWA in direct conflict with the clear language and the intent and purpose of ICWA.

So except for limited matters that are reserved to the Secretary of the Interior and state courts that decide Indian custody cases have the primary responsibility for interpreting ICWA.

So I believe the proposed regulations are in error and should be withdrawn. And I thank you so much for listening.

Man 1: Thank you for participating today.

Coordinator: The next comment comes from (Michelle Hughes). Your line is open.

(Michelle Hughes): Good afternoon. I want to thank everyone for the opportunity to talk today. I am an adoption attorney and I support what my fellow American academy adoption attorneys have aid in opposing the new regulations.

However, I really want to speak today as a mixed race person of African American heritage. I am a former board member of the Association of Multi Ethnic Americans who were vital in changing the US census for people in 2000 to claim what they wished to claim with regards to their racial identity.

With regards to ICWA, there is some big questions on what is Indian and who is Indian and how a mixed race person is defined as Indian and if that mixed race person gets to decide if they wish to be Indian, Indian and something else, or something else.

I also am very well aware as an African American person that the law has been implemented by some tribes over the time period over mixed race African American and Indian children. The actual use of using ICWA to implement racial discrimination against African American Americans forces me to say that I cannot support these new regulations or even ICWA, unlike most of my colleagues do, because it is racially discriminatory against both mixed race people and African Americans.

Thank you for your time.

Man 1: Thank you. Thank you for participating today. I want to note that it's just about 4:00 now. I know that we have a number of people that have identified that they still would like to make comments. We're going to work with (unintelligible) to accommodate that. And so we will be running over. Probably we'll go for as long as we can because we want to hear all of your comments. It's been very helpful in terms of the variety of comments that we've received thus far.

You know, I want to know that we've had - I'm really pleased with the input from folks from Arizona, Alaska, Maine, Michigan, North Carolina, Alabama, Kansas, Missouri, New York, New Jersey, Illinois. We've had very broad input on this call and I appreciate that.

So I'm going to turn it over to the Senior Counselor Rovina Cave to run this second segment of the public meeting. And we will accommodate as many comments as we can and go at least for another 15 minutes to a half hour and perhaps longer, depending on if folks haven't had an opportunity to comment. So I'm going to turn it over to Rovina. We'll take the next comment.

Coordinator: Thank you. The next comment comes from (Melissa Olsen). Your line is open.

(Melissa Olsen): Thank you. Yes my name is (Melissa Olsen) and I'm calling from Minnesota. And I'm currently a guardian ad litem on staff with the State of Minnesota and I represent the best interests of children in ICWA cases here in Hennepin County.

And I'm calling today to express my support for the proposed guidelines being made into the rules. It's my position that the guidelines as they're set forth right now will help Indian families seek placement of their children and grandchildren, nieces and nephews and extended family members because the guidelines outline in some detail what active efforts means for state courts, and that's very helpful for both - in my experience it's been helpful to try and define active efforts for the court and for all interested parties.

And those are really important because not only do they place Indian children within their extended families, but the keep siblings together by and large. I have several cases in which when the state court is applying active efforts, children are more likely to remain in their extended families and with their siblings. And I can provide many, many examples of that.

So I'm very much in support of the proposed guidelines being put into the rules today. I could, again, go on for a long time about, you know, how this might work and the many, many ways in which the guidelines would serve Indian children. But the bottom line is I think we really need to define active efforts, and the guidelines being proposed really do that, and that's going to be a huge help to everybody who works at least in the district I work in here in Minnesota.

In Hennepin County, I think there's been a lot of effort to really educate judges, attorneys, and stakeholders, interested parties. And so today Hennepin County has a very high compliance rate with the Indian Child Welfare Act. But that has been accomplished through the hard work of really defining what active efforts means. And so they have improved the relationships between social workers, guardian ad litem, parents, grandparents, and that's really important work to really continue to define active efforts.

And the guidelines really enshrine I think a lot of what's been learned over the many years that people have been practicing in this area of law. Thank you.

Rovina Cave: Thank you.

Coordinator: The next comment comes from (Sandra Deal). Your line is open.

(Sandra Deal): Hi my name is (Sandra Deal) and I am a public defender in Flagstaff, Arizona. I represent parents and children in dependency and severance proceedings. As a general rule, I have nothing to do with adoptions unless I represent the child as either the child's attorney or the child's guardian ad litem.

As to the previous caller, I agree with her. I actually like that there's more of a definition of active efforts in the proposed regulations. However, that's about where are area of agreement ends.

I am calling to voice my opposition to the proposed regulations for many reasons, but I think most of them have been stated to the group before. However, my main problem with the regulations is the fact that it overlooks the best interest of the child. And ICWA regulations were originally proposed back in 1979 with the goal of protecting the best interests of these Native American children.

And I also take not offense, but I disagree with the previous caller who said that there is no definition of best interests. The courts look to the laws and the precedential cases to determine what best interests is. So we have a pretty good idea of what best interests of the children is.

I am concerned that the way that these proposed regulations are written, that the best interests of these individual children will be overlooked as well as their constitutional rights and the constitutional rights of not only Native American parents, but often times there's a biological parent that is not Native American and the children and that parent will still be subject to ICWA.

So at this time, I would just like to echo the concerns regarding the concerns about state court flexibility, about the process, about due process for the individuals as well as confidentiality when I look through these proposed regulations and I would just ask that the proposed regulations be withdrawn. Thank you.

Rovina Cave: Thank you very much for that comment.

Coordinator: One moment please for the next comment. As a reminder, if you would like to make a comment please press *1. If you were in the queue prior and have not yet commented, please press *1 and record your name at the prompt to comment.

One moment please for additional comments.

(Unintelligible)

Coordinator: Again as a reminder, if you would like to make a comment and have not yet done so, even if you pressed star 1 prior, please press star 1 now and record your name at the prompt. One moment please.

The next comment comes from (Jessica Bly). Your line is open.

(Jessica Bly): Hello thank you. My name is (Jessica Bly). I'm a counselor for open adoption and family services in the northwest. I work in Portland Oregon and I work for (unintelligible) counseling birth mothers on all their options in determining when they do have an adoption they get to choose the family and have an open adoption with continued contact.

I called today because I oppose the proposed regulations because they would hurt parents and children by denying parents due process. The proposed regulations tell parents of children who are or may possibly be Native children that deciding to make a voluntary placement for adoption means that they're going to lose their fundamental right to privacy and anonymity, which could result in possible ostracism or shunning and a myriad of other negative consequences, and the biological parent's fundamental and constitutionally protected right to make a decision regarding the care, custody, and control of their children based on their determination as to their child's best interests and possibility of continued contact with the family.

I feel like that's conflicting with the language and intent of ICWA and the proposed regulations should therefore be withdrawn. Thank you.

Rovina Cave: Thank you for participating today.

Coordinator: Thank you. Our next comment is from (Emily).

(Emily): Hi my name is (Emily) (Unintelligible) and I'm calling as a private citizen. I'm calling on behalf of these regulations that I oppose, primarily section 23.131 with respect to not taking into account any sort of bonding and attachment from placement with respect to the child.

I grew up in Arizona and I now live in Nebraska and I respect what the BIA does to try to keep families together as far as to keep the Native American culture going. I've seen wonderful things within the Native American culture, especially the Navaho and the Hopi tribes.

But I think that no matter what background a child comes from, these sorts of issues should be taken into account because it doesn't - just because they are Native Americans doesn't mean that this won't affect them as far as moving them and not having a secure place. And for that reason I oppose these regulations, specifically section 23.131. Thank you.

Rovina Cave: Thank you very much for calling in today.

Coordinator: Thank you. Our next comment is from (Colleen Quinn).

(Colleen Quinn): Hi this is (Colleen Quinn). I'm an adoption attorney in Virginian and thank you very much for keeping the lines open an additional period of time. I know it makes your day much longer.

I am a Fellow of the American Academy of Adoption Attorneys and am the President Elect. I also chaired our birth parent rights committee for six years and have represented quite a - hundreds of birth parents, literally.

And I am opposing the guidelines for a number of reasons. But probably my number one reason is that I believe that the guidelines are too constraining,

especially in voluntary placements and they ignore birth parent's free choice and privacy issues.

And just by way of an example I'll just tell a simple story from one of the many cases I've had. We had a placing mom who did have Indian heritage. And she had actually applied for membership in the tribe three times. She mainly wanted to get the casino benefits and so she was very upset at the tribe that she had not been made a member.

And in picking her adoptive family, she was very careful. She selected a family that had Indian heritage. They were from a different tribe, but nonetheless that was important to her. And then unbeknownst to her, the agency that was involved in the adoption contacted her tribe, which then intervened and basically had an attorney all the way from the Midwest fly out to Virginia and intervene in our court proceeding.

The birth mother was livid. She had thought out her plan very carefully. She had been rejected by the tribe three times. And for them to be contacted and then to kind of throw a wrench into her whole plan was very upsetting to her.

And so I think careful consideration has to be given to a number of things in the guidelines, but definitely especially in the voluntary placement situation the free choice and privacy issues of these placing women -- many of whom have very well thought out adoption plans which include concerns about tribal heritage.

Again, I really thank you for keeping the lines open. I just think people being able to tell some stories can be very helpful. Thank you.

(Unintelligible)

Coordinator: Thank you. Our next comment...

Rovina Cave: Thank you for your comment. I just want to -- this is Rovina Cave -- we have the room available for another ten minutes, and so I just want to let folks know that and move on for our next comment:

Coordinator: Thank you. Our next comment is from (Karen Greenburg).

(Karen Greenburg): Thank you very much for taking the time and I appreciate it. I am an adoption attorney from Massachusetts. I am the past president of the American Academy of Adoption Attorneys. And I fully support all of my fellows who have worked tirelessly to have these regulations not be approved.

The concern that I have is I wonder how quickly constitutional rights can just be passed aside. And that is exactly what these regulations are doing. Think for a minute about due process. Think for a minute about the right for privacy. And what these regulations do is they just ignore those fundamental rights completely. I would urge you please to not allow these regulations to go forward. Thank you.

Rovina Cave: Thank you for your comment.

Coordinator: Thank you. Our next comment is from (John Moore).

(John Moore): Hi. I just want to thank you for allowing us to speak into this. I think that you're probably getting a little bit different story today than you're getting to hear in your holdings in Indian (unintelligible).

I just want to address briefly that the issue of best interest, you know, we hear a lot about best interest and those of us who are opposed to the guidelines -- which I am vehemently opposed to myself -- are concerned about the best interests of each individual child being ignored.

Historically, if you want to look at - Ms. (Nemo) talked about before, if you want to look at the legislative history of ICWA, you'll find that the BIA was very concerned about best interests back in the 1970s. In fact in the August 4, 1977 hearing before the United States Senate Select Hearing on Indian Affairs, the BIA submitted a statement. And the acting deputy director commissioner of the BIA at the time was (Raymond B. Butler) who was a Blackfeet Indian himself. His comment, I mean part of his comments included this, and I quote, "The child's best interest should be the compelling reason for this election of a placement."

Ten years later, or eleven years later in 1988 there were more hearings before the Senate Select Committee on Indian Affairs and at the time there were some in Congress that wanted to expand the reach of ICWA, expand the definition of Indian child. And the BIA at the time, which was headed by Mr. Ross Swimmer, who was former Principal Chief of the Cherokee Nation, was opposed to the expansion of ICWA's application.

Mr. Swimmer's testimony included the following quote, "We must start with the best interests of the child as our guiding principle." So you can see that historically the BIA when headed up by Native Americans, was considered the best interest of each individual child. It was not looking to just define best interest with one blanket statement in some regulations that somehow apply to every child with even a drop of Native American blood, if that's what their tribe allows.

Also, to say that attachment and bonding is only a Western, you know, construct is absolutely absurd. We've fostered and adopted Native American children who - and attachment is very much an issue for them. And so I can tell you from experience that it's not just a Western construct.

Of course the fact is that those kids are 94% non-Native, so you know, but again we have to consider each child's best interest individually and that's my main concern. And that's why I oppose these regulations.

Rovina Cave: Thank you. Thank you for your comment.

Coordinator: Thank you. Our next comment is from (Shari Provost).

(Shari Provost): Hi. My name is (Shari Provost) and I am a counselor at open adoption and family services in Portland, Oregon. And I work with women and couples who plan adoptions voluntarily and have open adoptions.

And I oppose the opposed regulations because they would hurt parents and children by denying parents due process.

The proposed regulations would place an unconstitutional burden on the fundamental rights of parents to make decisions regarding the care, custody, and control of their children in voluntary adoptive placements.

The proposed regulations limit parental choice by requiring the participation of and by necessary implication notice to tribes and extended families of parents in placement decisions. And by devaluing parental preferences and the choice of placement resources and determinations of good cause to deviate from ICWA placement preferences.

The proposed regulations tell parents of children who are or who may even possibly be Indian children that deciding to make a voluntary placement for adoption means losing their fundamental rights to privacy and anonymity, with resulting possible ostracism, shunning, and a myriad of other negative consequences and their fundamental and constitutionally protected right to make a decision regarding the care, custody, and control of their children based on their determination as to their child's best interest and possibility of continued birth family contact.

This conflicts with the language and the intent of ICWA. The proposed regulations should therefore be withdrawn. Thank you.

Rovina Cave: Thank you. Thank you for your comment.

Coordinator: Thank you. Our next comment is from (Holly Howard).

(Holly Howard): Yes can you hear me?

Rovina Cave: Yes. I can hear you.

(Holly Howard): Ok thank you. I am an LTC and also an adoption specialist working with all adoption members of the triad -- the children, the adoptive parents, and the birth family.

There's multiple reasons why I oppose the proposed regulations. But the bottom line for me is that it is not in a child's best interest because more than blood, the emotional ramifications that occur when attachment has occurred within a child and the adoptive parent or foster parent, that does serve the best interest. And I think we need to look past not only heritage but also what is

truly going to have the best health outcome emotionally, physically as well, for that child.

So I oppose regulations. So due to time, I'll stop there. Thank you so much.

Rovina Cave: Thank you very much.

Coordinator: Thank you. Our next comment is from (Joanna Beck-Wilkinson). Your line is open. Please check your mute feature.

(Joanna Beck-Wilkinson): Hi this is (Joanna Beck-Wilkinson). I am an adoption attorney from Missouri. And I have been doing voluntary adoptions for about seven years.

And Indian parents should have the same right to make decisions for his child as a non-Indian parent would have. And the proposed regulations would deny him those same rights. The regulations would impose an unconstitutional burden on his fundamental right to make decisions regarding his child's care, custody, and control in voluntary placements. They would limit his choice by requiring him to involve tribes and extended family in his placement decision.

The regulations would, in short, tell an Indian parent that making a voluntary placement decision means that he loses his fundamental right to privacy and anonymity. Were he not an Indian, he would retain those rights.

Voluntary adoption gives the parent the respect that he deserves by giving him the power to make his own decision about what's best for his child without unwanted involvement from others -- whether they be tribe or extended family.

I oppose the regulations because firstly, they would rob an Indian parent of that respect and that power. And secondly, because they conflict with the language and intent of ICWA.

The proposed regulations should therefore be withdrawn. Thank you.

Rovina Cave: Thank you very much. It looks like we have one more caller in queue and we have about another couple minutes so we would like to take that call.

Coordinator: Thank you. Our next comment is from (Jenn Hall).

(Jenn Hall): Hi I'm an adoptive mom from New Hampshire. And I oppose the proposed regulations. My son's birth mother, in Phoenix Arizona, actively chose for her son to live with me in New Hampshire and we stay in touch with her. And she expresses her gratitude for the choices that we were all able to make together without someone else dictating the decision.

So I'm asking that you please respect the right of birth mothers to make their own choices. Thank you.

Rovina Cave: Thank you very much. Thank you to all of the callers today. We've received helpful comments and suggestions today from New Hampshire, Massachusetts, New Jersey, Maine, Arizona, Alabama, Washington DC, New York, California. This is all important to our process.

Thanks so much for your participation. If you have additional comments, please send them to comments@bia.gov. The deadline again is May 19. We really appreciate your time and interest and we look forward to receiving written comments. Thank you.

Coordinator: Thank you and this does conclude today's conference. You may disconnect at this time.

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