

FOR IMMEDIATE RELEASE - Nebraska Supreme Court Opinion Released Today Weakens the Rights of Native Americans in the Foster Care System

LINCOLN, Nebraska – January 18, 2008 - Legal Aid of Nebraska (Legal Aid) and the Nebraska Appleseed Center for Law in the Public Interest (Nebraska Appleseed) are disappointed and saddened by today's decision by the Nebraska Supreme Court weakening the rights of Native Americans in the foster care system.

According to a recent report by the National Indian Child Welfare Association, Nebraska is the 8th highest state in the country in terms of the percentage of children served in foster care who were American Indian/Alaskan Native and among the top 9 states in the country in terms of the greatest disproportionality of American Indian/Alaskan Native children in the foster care system.

The federal Indian Child Welfare Act (ICWA) and Nebraska's state statutory counterpart, the Nebraska Indian Child Welfare Act (NICWA), were intended to address this disproportionality and preserve Native American culture by setting higher standards and providing for notice to tribes in child welfare cases involving Native American children.

The Supreme Court missed an opportunity today to address these issues in Nebraska. Among other things, the court's decision adopts a lower burden of proof in ICWA cases than was intended under federal law and fails to provide necessary guidance for what constitutes "active efforts," the State's heightened requirement to provide remedial services and rehabilitative programs to families of Native American children. Although the opinion notes that "active efforts" is a higher standard than the "reasonable efforts" standard in non-ICWA cases and that "active efforts" must include some culturally relevant component, it falls short of providing the clarification needed.

"We are concerned that today's decision by the Supreme Court does not provide enough information to caseworkers in determining what they are supposed to do under state and federal law in child welfare cases involving Native American children," said Sarah Helvey, Director of Appleseed's Child Welfare System Accountability Program. "This information is critical because these requirements are intended to preserve important cultural connections for Native American children."

Despite today's decision, Nebraska Appleseed and Legal Aid are committed to pursuing other options for protecting the rights of Native Americans in the foster care system. "We intend to evaluate other avenues for insuring that the intent of the Indian Child Welfare Act is fully recognized in Nebraska," said Muirne Heaney, Managing Attorney of Legal Aid's Omaha office, who represented the appellant mother in this case.

Muirne Heaney of Legal Aid of Nebraska represented the appellant mother, Martina A., and Sarah Helvey and Jennifer A. Carter of Nebraska Appleseed filed an amicus curiae brief in this case. Also filing amicus curiae briefs in this case were Mark Tilden of the Native American Rights fund on behalf of the Yankton Sioux Tribe of South Dakota, the Ponca Tribe of Nebraska, the Santee Sioux Tribe of Nebraska, and the National Indian Child Welfare Association; and Shannon Smith of the Indian Child Welfare Law Center, and Padraic I. McCoy and Mandi L. Hill of Faegre & Benson, L.L.P. on behalf of the Indian Child Welfare Law

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