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EXHIBIT 18
DATE 3-30-05
SB 86

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March 28, 2005

Senator Frank J. Smith
Capitol Station
Helena, MT 59620

Re: Senate Bill 86

Dear Senator Smith:

I hope you had a wonderful Easter break.

As I said I would last week before you left, I am sending this letter to each of the members of the Native American Caucus of the Legislature. As you know, I have a concern with a bill you are sponsoring, SB 86, which alters some definitions in MCA § 41-3-102, as well as amends MCA §§ 41-3-205, 41-3-432, 41-3-437, and 41-3-609, regarding providing child protective services to Montana children who are Native Americans.

As you might recall, I appeared at the Senate hearing on this bill as an informational witness to ask whether in fact the proposed amendments to these sections would not raise the standard of proof the Department of Public Health and Human Services ("DPHHS") would have to meet before it could remove a Native American child from a household that it believes to be abusive. My point was, and is, that if in fact these amendments do raise the standard of proof required of DPHHS when Native American children are involved, that would mean that Montana children who are Native American would receive less care and protection from the State than all other children. Notwithstanding that this appears to be a clear equal protection violation, I think the practical consequences are more important than those revealed by such legal language. What it means is that Native American children would be left in a potentially abusive situation longer than non-Native American children would be. I simply do not believe this is something our Montana Constitution allows, and I do not believe that it is something that the Legislature wants to condone.

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While I understand that the Federal Indian Child Welfare Act and its definitions have something to do with this, I also understand that the Montana statute as it is now written allows state district courts a certain amount of latitude so that they can protect Native American children, using the same standards as those for non-Native American children. I certainly think this is preferable to automatic and unthinking conformance with the federal Act, which as a practical matter requires authorities to prove more abuse or at least to surpass a higher standard of proof in order to protect a Native American child.

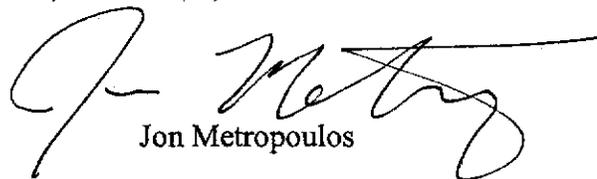
Most tellingly, the representative from the DPHHS, Shirley Brown, admitted, when asked, that in fact the change to the statute would mean that the DPHHS would have to meet a higher standard of proof to bring protective services to Native American children. She tried to argue that this would not have a practical consequence, but as we all know, when lawyers get involved it certainly could result in a situation where a Montana child who is Native American would not receive protective services in a situation where a non-Native American child would.

I very much appreciate your willingness to talk with me about this and former Representative Jeff Laszloffy's suggestion that I meet with the entire Native American Caucus to try to present my concern. Since the hearing on this matter is to be held Wednesday, March 30, and I will be out of town on Tuesday, March 29, I have had to send these letters rather than meet personally with each member of the Caucus. I will attempt to do so, however, on Wednesday before the hearing.

I look forward to speaking with you at the hearing and with any other member of the Legislature who takes an interest in this matter.

Sincerely,

GOUGH, SHANAHAN, JOHNSON & WATERMAN



Jon Metropoulos

By messenger

cc: Rep. Arlene Becker, Chair, Human Services
Rep. Tom Facey, Vice Chair, Human Services
Rep. Ron Stoker, Vice Chair, Human Services
Senator Gerald Pease
Rep. Norma Bixby
Rep. Margaret H. Campbell
Rep. Joey Jayne
Rep. Veronica Small-Eastman
Rep. Jonathan Windy Boy