THE FIGHT TO PROTECT THE INDIAN CHILD WELFARE ACT (ICWA)

ICWA protects American Indian and Alaska Native kids in child welfare proceedings by keeping them in the care of extended family or tribes whenever possible. In ***Haaland v. Brackeen***, a small group of opponents will argue in front of the Supreme Court that those protections should be taken away—and the challenge will have far-reaching impacts.

Here's what you need to know about this case, which will be a defining issue of 2022:

ICWA IS NECESSARY.

1 ICWA puts best practice into law.

Experts agree that placing kids with extended families or communities when possible is preferred. These placements give kids a connection to the people and places they come from. ICWA protects identity, familial network, and sense of belonging—things that all children need.

2 Family separation is a modern-day threat.

Systemic, intergenerational trauma and neglect coupled with bias has meant that Native children still enter the child welfare system in disproportionate numbers. 15% of Native children can expect to enter foster care at some point before their 18th birthday compared to about 5% of white children and they are often not placed with relatives or other Native families, even when such placements are available and appropriate.

3 ICWA exists to curb and heal generations of harm.

When ICWA was passed in the 1970s, research found that 25%-35% of all Native children were being separated from their parents, extended families, and communities by state child welfare and private adoption agencies; of these, 85% were placed outside of their families and communitieseven when fit and willing relatives were available. The family separation crisis compounded nearly 200 years of active cultural genocide in the boarding school system, starting in the early 1800s. ICWA has acted as a much-needed reform on the practices that have separated Native children from their families for centuries.

WHAT DO ICWA CHALLENGERS WANT?

✗ Not the well-being of Native children.

ICWA opponents have two things in common: deep pockets and minimal contact with Native tribes, organizations, leaders, or peoples. ICWA opponents include a conservative think tank, a law firm that represents Big Oil, and the State of Texas. ICWA supporters include 497 Tribal Nations, 62 Native-led organizations, 26 child welfare organizations, 23 states and DC, and 87 congresspeople. One side is best suited to represent the interests of Native kids; the other is best suited to undermine them.

✗ Not respect for tribal sovereignty.

In a blatant and intentional misunderstanding of sovereignty, ICWA's opponents argue that the law is unconstitutional because it creates a different set of rules for Native kids—that is, they say it is racist. Not so. The U.S. Constitution recognizes Tribes as sovereign, much like states or foreign nations; we are federally recognized entities with inherent power to self-govern and thousands of years' experience doing so. Tribal citizenship confers a political classification that allows for self-determination in our affairs.

✓ A coordinated attack on tribal rights.

These malicious attacks are familiar; this time, our enemies are attacking ICWA so they can use Native kids and cultures as a backdoor to ultimately undermine the rights of tribes. If the Supreme Court undermines Tribal Nations' sovereign rights, our opponents could set legal precedent that has serious consequences for other issues like tribal gaming and land rights. A challenge to ICWA is a threat to tribal rights.

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