Insights: News

Fifth Circuit Court Rules in Favor of Native American Children and Families, Reaffirms that the Indian Child Welfare Act is Constitutional

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WASHINGTON, D.C. – Today, Cherokee Nation Principal Chief Bill John Baker, Morongo Band of Mission Indians Chairman Robert Martin, Oneida Nation Chairman Tehassi Hill and Quinault Indian Nation President Fawn Sharp issued the following statement in response to today's ruling in *Brackeen v. Bernhardt*:

"Today, the Fifth Circuit Court of Appeals reaffirmed what we already knew: the Indian Child Welfare Act is constitutional and serves the best interests of children and families. We are pleased that the court followed decades of legal precedent in its ruling, preserving a law that protects Indian children and allows them to retain their identity by staying within their families and tribal communities.

Despite the misguided attacks on the law, today's ruling speaks for itself. ICWA ensures that we have a process in place focusing first and foremost on the welfare and safety of children. This is why so many Americans from across the political spectrum have supported upholding the law. We want to thank the Trump administration, the Department of Justice, Deputy Assistant Attorney General Eric Grant, and the Department of Interior for their hard work fighting on behalf of children."

In 2017, individual plaintiffs Chad and Jennifer Brackeen, a couple from Texas, along with the state attorneys general in Texas, Louisiana, and Indiana, sued the U.S. Department of the Interior and its now-former Secretary Ryan Zinke to challenge ICWA. The Morongo, Quinault, Oneida and Cherokee tribes intervened as defendants in the case *Brackeen v. Bernhardt*.

In October 2018, a federal judge in the Northern District of Texas struck down much of ICWA. Defendants appealed the lower court's decision and asked the Fifth Circuit Court of Appeals to reverse the decision. Last December, the Fifth Circuit Court of Appeals granted a stay requested by the defendants, putting a hold on the ruling. In March 2019, the Fifth Circuit Court of Appeals heard oral arguments from plaintiffs and defendants in the *Brackeen* case.

There is broad, bipartisan support against this misguided attack on a law that is crucial for protecting the well-being of Indian children and Indian sovereignty. A total of 21 attorneys general, representing a broad range of states, filed an amicus brief in support of the defendants, arguing that ICWA is an appropriate exercise of Congress's authority to legislate in the field of Indian affairs and does not violate the Tenth Amendment or equal protection laws. The Trump administration has also reiterated its support for ICWA, tribal sovereignty and the safety of Indian children.

An additional 325 tribes, 57 tribal organizations, members of Congress, Indian law and constitutional law scholars,

and 30 leading child welfare organizations have also filed friend-of-the-court briefs in support of the defendants.

For additional information on this case and the Indian Child Welfare Act please visit: www.ProtectIndianKids.com

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