Insights: News

Kilpatrick Townsend Helps Score Supreme Court Win for Indian Tribes and Indian Families

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On Thursday, June 15, the U.S. Supreme Court issued its decision in *Haaland v. Brackeen*, a dangerous challenge to the constitutionality of the Indian Child Welfare Act (ICWA) – granting a huge win to Indian Country thanks to arguments advanced by Kilpatrick Townsend.

The Indian Child Welfare Act was adopted by Congress in 1978 to protect Indian families and Indian children, and has been recognized as the gold standard in child welfare for over 40 years. The plaintiffs challenged the constitutionality of ICWA, arguing that it violates the equal protection clause, which guarantees equal protection under law, and the anti-commandeering doctrine, stating that the federal government cannot require states to adopt or enforce federal law. After expedited briefing and argument, the firm successfully obtained a ruling from the Fifth Circuit Court of Appeals that reversed a district court decision striking down ICWA on Constitutional grounds. The Fifth Circuit reheard the case en banc and principally affirmed that Congress has authority to enact ICWA and that the definition of an Indian child does not violate the Equal Protection clause of the 14th Amendment to the U.S. Constitution.

The U.S. Supreme Court, by a vote of 7-2, upheld the constitutionality of ICWA across the board. Justice Barrett delivered the opinion of the Court noting that "This case is about children who are among the most vulnerable: those in the child welfare system." First, the Court held that ICWA fell within Congress's authority. The Court explained that the statute fell within Congress's plenary authority to act in the field of Indian affairs and did not violate the states' authority over family law. Second, the Court rejected the plaintiffs' arguments that ICWA violated the "anti-commandeering" principle. The Court found that the statute's "active efforts" requirement and placement preferences apply equally to states and private parties, so do not unconstitutionally commandeer state officials. The Court also upheld the statute's recordkeeping requirements, finding them "ancillary" to state courts' judicial functions. Finally, the Court also rejected the plaintiffs' equal protection arguments. The Court held that neither Texas nor the private plaintiffs had standing to assert equal protection claims.

Adam Charnes argued on behalf of the four Indian tribes (the Quinault Indian Nation, Cherokee Nation, Morongo Band of Mission Indians, and Oneida Nation) that intervened in the case to protect ICWA before the district court, the Fifth Circuit panel, and en banc Fifth Circuit. Adam was joined by **Rob Roy Smith** on the briefs before the Supreme Court on behalf of the Quinault Indian Nation.

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