

INDIAN CHILD WELFARE ACT: BACKGROUND AND STATUS

What is the Indian Child Welfare Act?

Congress enacted the Indian Child Welfare Act (ICWA) nearly 45 years ago to combat a widespread and destructive practice of separating Native American children from their families and placing them with non-Native parents. The law provides guidance to States “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.” 25 U.S.C. § 1902. ICWA applies to state-court custody proceedings of child abuse and neglect and adoption cases involving Native children and sets minimum standards for the handling of these cases. ICWA prioritizes placing American Indian children in Native – rather than non-Native – homes in cases of neglect, abuse, and adoption.

Where does ICWA stand today?

The law is now being questioned by the U.S. Supreme Court and oral arguments are set for the coming months. A recent lawsuit - [Brackeen v. Haaland](#) – brought by Texas (and previously Indiana and Louisiana) and individual plaintiffs has challenged the law’s constitutionality. Plaintiffs for the case assert ICWA unfairly challenged a non-Native couple’s adoption of a Navajo toddler based on race. They also argue child placement preferences and other provisions in the law impose an excessive burden on states to involve and defer to tribes. This case has worked its way through the lower courts and is now set to be argued in front of the United States Supreme Court.

The Supreme Court’s oral arguments for ICWA is set for
Wednesday, November 9, 2022



Why is it important?

At Prevent Child Abuse America we advocate for policies and services that strengthen families and communities and promote healthy child development. We are committed to addressing the conditions that put our children at risk. When investments are made in policies that build strong families and supportive communities, we are securing the safe, stable and nurturing environments that all children need to thrive. ICWA upholds family integrity and stability by keeping Indian children connected to their culture and community.



- American Indian/American Native children are **four times more likely** to be removed by state child welfare systems than non-Native children even when their families have similar presenting problems.
- American Indian/American Native children are in state foster care at a rate **14 times higher** than their rate in the general population.
- **56%** of adopted American Indian/American Native children are adopted outside their families and communities.

Source: <https://www.nicwa.org/wp-content/uploads/2018/10/Setting-the-Record-Straight-2018.pdf>

What has been the response?

Supporters of upholding ICWA have been led by a bipartisan coalition of tribal leaders, policymakers, and organizations. As of late August 2022, 21 amicus briefs have been submitted to the U.S. Supreme Court in favor of upholding ICWA. These supporters signing the briefs were from 497 Tribal Nations, 62 Native organizations, 20 states and DC, 87 members of Congress, and 27 child welfare and adoption organizations, and many others.

Additionally, with the enactment of ICWA and the possibility of a change in the federal law looming, decision-makers have their own policy responses.

- Six states (Iowa, Michigan, Minnesota, Nebraska, Oklahoma and Washington) have adopted provisions from the federal ICWA in whole or in part into state statute.
- In Arizona, the Pascua Yaqui Tribe codified a partnership with the Arizona Department of Child Safety to keep its children safely connected to their communities and culture, should the federal ICWA be overturned.
- Wyoming lawmakers are considering drafting a version of the endangered federal law requiring American Indian foster children to be placed as much as possible with extended family or in tribal homes, rather than non-tribal families.
- Oregon passed a law in 2020 to address the disproportionate number of Native American foster children in the system.

Resources:

- [National Indian Child Welfare Association](#)
- [National Indian Child Welfare Association Policy Update](#)
- [National Congress of American Indians](#)
- [Association on American Indian Affairs](#)
- [Native American Rights Fund](#)
- [The Indian Child Welfare Act Fact Sheet](#)
- [The Indian Child Welfare Act: A Primer for Child Welfare Professionals](#)
- [American Indian and Alaska Native child welfare system contact across U.S. States: magnitudes and mechanisms](#)