

CALIFORNIA TRIBAL FAMILIES COALITION

November 4, 2017

Conference of Western Attorneys General
1300 I Street
Sacramento, CA 95814

Via email to ccoppin@cwagweb.org

RE: *Brackeen, et al. v. Zinke, et al.*; Indian Child Welfare Act

Dear CWAG Members,

The Conference of Western Attorneys General has often been a leader on the Indian Child Welfare Act (ICWA) and other tribal issues because of its deep understanding of Indian law, and close connection to area tribes. These connections are invaluable to the understanding of tribal issues generally and Indian child welfare issues specifically. Indeed, the need to protect tribal children as citizens of their tribes by state attorneys general was evident in their amicus support in *Adoptive Couple v. Baby Girl*.¹ The critical time has come again for state attorneys general to stand with tribes in defense of the law that protects tribal children and families.

On October 25, 2017, Texas and two foster care parents filed a lawsuit challenging the constitutionality of the ICWA in federal district court in the northern district of Texas.² When Congress passed ICWA in 1978 pursuant to its trust responsibility and the Indian Commerce Clause, “recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people”,³ it agreed that maintaining and protecting Indian families was well within its power. ICWA is grounded in the political relationship between sovereign entities, not on a racial classification of Native Americans.⁴ While we recognize state attorneys general and tribes may differ on some Indian law issues, we believe we can all agree the fundamental provisions of ICWA provide much-needed protections for a vulnerable population.

¹ *Adoptive Couple v. Baby Girl*, 133 S.Ct. 2552, 2557 (2013).

² *Brackeen, et al. v. Zinke, et al.*, Complaint and Prayer for Declaratory and Injunctive Relief, No. 17-cv-00868 (N. D. Texas, Oct. 25, 2017).

³ 25 U.S.C. § 1901.

⁴ *Morton v. Mancari*, 417 U.S. 535, 553-555 (1974).

OUR MISSION

To protect the health, safety and welfare of tribal children and families, which are inherent tribal governmental functions and are at the core of tribal sovereignty and tribal governance.

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ICWA is considered the gold standard of child welfare practice by at least 17 national child welfare organizations, such as the National CASA Association, the National Association of Social Workers, Casey Family Programs and the Annie E. Casey Foundation.⁵ ICWA is critical to protecting the safety of Indian children and protecting their rights as tribal citizens in the child welfare system. It works to preserve families and keep Indian children connected to their families and communities when they cannot safely return home. These are foundational principles to good social work practice and are embedded throughout many federal child welfare laws.⁶ The Texas case is not only an assault on ICWA but out of line with best practices and other federal mandates.

In the nearly 40 years since ICWA was passed, no state, until now, has challenged its constitutionality. In fact, at least 33 states have passed state statutes to strengthen its application.⁷ California passed Senate Bill 678 in 2006 which not only codified ICWA but expanded its protections in some areas and created Judicial Council forms and Rules of Court, as well as an ICWA Initiative (now the Tribal Court-State Court Forum). In addition to state legislation, many states have established ICWA commissions, developed ICWA workgroups or negotiated tribal-state child welfare agreements. States have applied ICWA in child custody proceedings throughout the United States for 40 years, protecting Indian children, preserving Indian families and securing the future of Indian tribes.

This Texas case continues an unfortunate new theme in Indian Country. Anti-ICWA advocates are pursuing a legal strategy to have ICWA declared unconstitutional. These individuals and organizations paint a bleak picture of the destruction of an Indian child's life when ICWA is applied in a child custody proceeding. This high-level propaganda is fundamentally untrue. We know - those of us who were raised in Indian Country, those of us who raise our children on the reservations, those of us who know Indian families – ICWA protects our children. This targeted and well-financed attack on ICWA only reminds tribes of the long and tortured history we have endured in the United States.

⁵ See Brief of Casey Family Programs & Child Welfare League of America, et al. as Amici Curiae Supporting Respondent, *Adoptive Couple v. Baby Girl*, 133 S.Ct. 2552 (2013) 2013 WL 1279468 at 1 (“Amici are united in their view that, in the Indian Child Welfare Act, Congress adopted the gold standard for child welfare policies and practices that should be afforded to all children . . .”).

⁶ See e.g. 25 U.S.C. 671(a)(19)(relative preference requirement for states to receive federal foster care funding).

⁷ See National Conference of State Legislatures, *State Statutes Related to the Indian Child Welfare Act* (July 19, 2017) available at <http://www.ncsl.org/research/human-services/state-statutes-related-to-indian-child-welfare.aspx>.

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Tribes feel a tremendous responsibility to protect and promote the health, safety and welfare of tribal children. We ask you to stand with tribes in protecting tribal children and families—by defending ICWA. To learn more about how to join tribes in our effort to uphold ICWA, please contact our Executive Director, Delia Sharpe, at delia.sharpe@caltribalfamilies.org or 916-583-8289.

Sincerely,



Robert Smith
Chairman