

The INTER-TRIBAL COUNCIL of the FIVE CIVILIZED TRIBES

A Resolution Supporting the Indian Child Welfare Act of 1978 and Federal Legislation to Minimize the Potential Impact of Supreme Court Decision in Brackeen v. Haaland

Resolution No. 21-33

WHEREAS, the Inter-Tribal Council of the Five Civilized Tribes (ITC) is an organization that unites the tribal governments of the Cherokee, Chickasaw, Choctaw, Muscogee, and Seminole Nations, representing approximately 815,000 Indian people throughout the United States; and

WHEREAS, the landmark Indian Child Welfare Act of 1978 (ICWA) was enacted to prevent the unnecessary breakup of Native families; and

WHEREAS, ICWA has been labeled “the gold standard” of child welfare policy by experts and national leading child advocacy organizations far beyond Indian Country; and

WHEREAS, the Fifth Circuit’s decision in *Brackeen v. Bernhardt* upheld the vast majority of ICWA, which includes important provisions that serve the best interests of Indian children and tribal families - but found some specific provisions of ICWA, including active efforts and qualified expert witness, violate the anti-commandeering doctrine by impermissibly burdening the States in carrying out the underlying law; and

WHEREAS, the Fifth Circuit’s decision is not applicable outside of Texas, Louisiana, and Mississippi, but ICWA, as a pillar of Tribal sovereignty, must be closely and vigorously protected; and

WHEREAS, aspects of the the decision misunderstand the unique relationship between the United States and Tribal governments and ignore basic tenets of federal Indian law; and

WHEREAS, In September 2021 four Tribes and the U.S. Solicitor General filed cert petitions with the Supreme Court in *Brackeen v. Haaland*, requesting the Court’s review of the Fifth Circuit’s decision and defending ICWA and its constitutionality; and

WHEREAS, The State of Texas and the Brackeen family seek broad review on ICWA’s constitutionality; and

WHEREAS, Federal legislation that makes a minor addition to 42 U.S.C. 671(a) may address anti-commandeering arguments and dissuade the Court from reaching a problematic result; and

NOW THEREFORE LET IT BE RESOLVED THAT, the Inter-Tribal Council of the Five Civilized Tribes strongly objects to the Fifth Circuit’s decision that any aspect of ICWA is unconstitutional.



Chuck Hoskin Jr.
Principal Chief



Bill Anoatubby
Governor



Gary Bolton
Chief



David W. Hill
Principal Chief



Lewis J. Johnson
Principal Chief

The INTER-TRIBAL COUNCIL of the FIVE CIVILIZED TRIBES

BE IT FURTHER RESOLVED, the Inter-Tribal Council of the Five Civilized Tribes believes ICWA, as a pillar of sovereignty, must be fiercely protected.

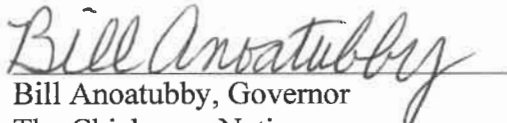
BE IT FURTHER RESOLVED, the Inter-Tribal Council of the Five Civilized Tribes supports Cherokee Nation, Oneida Nation, Quinault Indian Nation, and Morongo Band of Mission Indians, and the United States, as they seek certiorari to review the Fifth Circuit's decision to the extent it struck down the relevant parts of ICWA.


BE IT FURTHER RESOLVED, the Inter-Tribal Council of the Five Civilized Tribes supports Federal legislation to help further buttress the argument that ICWA does not violate the anti-commandeering doctrine.


BE IT FURTHER RESOLVED, the Inter-Tribal Council of the Five Civilized Tribes calls on NCAI and NICWA to support an appropriate legislative fix.

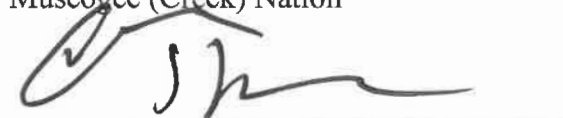
CERTIFICATION


The foregoing resolution was adopted by the Inter-Tribal Council of the Five Civilized Tribes meeting in Durant, Oklahoma on this 8th day of October, 2021, by a vote of _____ for _____ against and _____ abstentions.


Bill Anoatubby, Governor
The Chickasaw Nation


David W. Hill, Principal Chief
Muscogee (Creek) Nation


Gary Patton, Chief
Choctaw Nation of Oklahoma


Chuck Hoskin Jr., Principal Chief
Cherokee Nation


Lewis J. Johnson, Principal Chief
Seminole Nation of Oklahoma