

ICWA Held Constitutional in a Big Win for Indian Country

Category: Policy Blog

written by NCUIH | August 9, 2019

Today, the U.S. Court of Appeals for the Fifth Circuit found the Indian Child Welfare Act (ICWA) constitutional, overturning a decision from the U.S. District Court for the Northern District of Texas. Last October, a U.S. district judge declared ICWA unconstitutional under the Fifth Amendment's Equal Protection Clause, arguing that it creates a separate set of practices for a racial group. The *Brackeen v. Bernhardt* case was appealed to the U.S. Court of Appeals for the Fifth Circuit, where NCUIH joined nearly 400 Tribes and Indian organizations in filing an *amicus curiae* brief in support of ICWA's constitutionality.

In its opinion filed today, the Court rendered judgment in favor of the defendants (the federal government and four tribes) on all claims. The Court held that ICWA is constitutional because: it is based on a political classification that is rationally related to the fulfillment of Congress's unique obligation toward Indians; ICWA preempts conflicting state laws and does not violate the Tenth Amendment anticommandeering doctrine; and ICWA does not violate the nondelegation doctrine. The court also concluded that a Bureau of Indian Affairs Final Rule implementing ICWA is valid and constitutional.

Tribal leaders, Indian organizations, child advocates, and attorneys specializing in Indian law had been concerned that if the Texas ruling were upheld, it could have opened the door to constitutional challenges of other federal laws based on the special political relationship between AI/ANs and the U.S. government – including laws and regulations affecting health care, housing, criminal jurisdiction, gaming, and the environment.

Recent federal actions related to Medicaid and Native American Housing Block Grants have also signaled that a redefinition of "Indian" as racial could be used to take away benefits that fulfill the federal government's trust responsibility to American Indian and Alaska Native people.

You can view the opinion [here](#).