

# **PRESS RELEASE: ICWA Held Constitutional in Big Win for Indian Country**

Category: Press Release

written by Meredith Raimondi | August 9, 2019

## **NCUIH Previously Filed Amicus Curiae Brief in Support of ICWA**

**Washington, DC (August 12, 2019)** — On Friday, August 9, 2019, the U.S. Court of Appeals for the Fifth Circuit found the Indian Child Welfare Act (ICWA) constitutional, overturning an October 2018 decision from the U.S. District Court for the Northern District of Texas that held ICWA unconstitutional under the Fifth Amendment's Equal Protection Clause, declaring 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.

"All children and families thrive when kept together. That is why the United States Congress passed the Indian Child Welfare Act over 40 years ago as part of the federal government's trust obligation owed to Indian Country. The decision to uphold ICWA is a win for all of Indian Country. We are grateful for the leaders in Congress who also filed a joint [bicameral, bipartisan amicus brief](#) in defense of ICWA. U.S. Senators **Tom Udall** (D-N.M.) and **Lisa Murkowski** (R-Alaska) along with U.S. Representatives **Karen Bass** (D-Calif.), **Don Bacon** (R-Neb.), **Betty McCollum** (D-Minn.), **Tom Cole** (R-Okla.), and **Don Young** (R-Alaska)," said NCUIH Executive Director Francys Crevier.

In its opinion, 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 anti-commandeering doctrine (the doctrine that prohibits the federal government from commandeering state governments or requiring states or state officials to adopt or enforce federal law); and ICWA does not violate the nondelegation doctrine (the principle that Congress cannot delegate its legislative powers to other entities). 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 American Indians and Alaska Natives (AI/AN) and the U.S. government - including laws and regulations affecting health care, housing, criminal jurisdiction, gaming, and the environment.

- [Amicus Brief with NCUIH](#)
- [Lawmakers File Bipartisan, Bicameral Amicus Brief in Support of the Indian Child Welfare Act](#)
- [United States Fifth Circuit Court of Appeals Opinion](#)