Native children and sovereignty targeted in right-wing lawsuit

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Determined right-wing forces have piled onto the *Brackeen v. Haaland* court case in order to overturn the hard-won Indian Child Welfare Act (ICWA) of 1978. They charge that ICWA is "racist against whites" because it defends Native children being raised in their own culture and families; and "unconstitutional" because it disrespects "states' rights." This legalistic war may soon end up in the right-wing U.S. Supreme Court.

The Brackeen custody case, moving through the legal system since 2016, started with an Evangelical white couple in Texas who sued to adopt a Navajo child against tribal wishes. Right-wing think tanks Goldwater Institute, Heritage Foundation, and Cato Institute have backed Brackeen and several anti-ICWA cases in the past. The Brackeens are represented (free of charge) by the Gibson Dunn law firm, which also represents huge oil transfer companies Enbridge and Energy Transfer, of the Dakota Access and Line 3 pipelines. Fossil fuel corporations have been the worst violators of Native land rights and treaties. They covet the land and resources.

Native American nations recognize this war as far more than a custody trial. It is a wholesale assault on Indian children and families, and an undisguised attempt to delegitimize Native sovereignty and erase Indigenous culture. It is clearly a battlefield in the far right's intensifying campaigns against critical race theory, transgender rights, voters' rights, and reproductive rights — parts of the war on working people, women, people of color, and LGBTQ+ folks.

Treaties take priority.

"States' rights" demands used by Confederate states to prolong Black slavery in the 19th century are now being mounted to prolong racism in the 21st century. The lawsuit has involved not only Texas, but Louisiana, Ohio, and Indiana.

However, declarations that individual states have the right to control adoptions regardless of federal regulations such as the ICWA have no basis. There are 573 federally recognized tribes who have a government-to-government relationship with the United States. These tribes were nations

with their own laws, land rights, and cultures long before the U.S. Constitution was ever written. And the Constitution upholds these treaties in Article 6 as the "supreme Law of the Land," taking priority over any conflicting state laws. If ICWA is not upheld, it could lead to future attacks on tribal land rights, casino income, tribal law and ultimately the sovereignty of Indigenous nations.

A victory celebrated.

Passage of the federal Indian Child Welfare Act in 1978 was won after years of struggle to stop the separation of Native children from their families and tribal communities. In Washington state, Puyallup tribal elder Ramona Bennett was one of many warrior women who worked tirelessly to find and support native families to foster and adopt tribal children.

In 1976, she confronted social workers who thought white religious families with higher incomes provided better homes than Indian extended families. Unwavering local organizing led to a Washington state Indian child welfare policy, which became a model for the national Act. Bennett met with congressional committees and national tribal leaders in Washington, D.C., in 1978 to press for the ICWA. "We protested, had kidnap warrants against us," she reports, "we made it a federal issue and it worked!" This new legislation has proven best for all foster children.

IWCA slowed abusive removal of children from Native families and culture for 40 years. But it still needs much stronger enforcement and monitoring.

Ongoing cultural genocide.

The long history of U.S. government policy that sought to eradicate Native American culture and sovereignty has been recently exposed by horrific news of thousands of Native children buried on the grounds of Indian boarding schools. Many more were forced into Catholic and government boarding schools. Beating these children for any hint of their language or culture was the officially encouraged approach for over a century.

Then came the federal Indian Adoption Project in the 1960s where welfare agencies snatched thousands of children away from their families to be adopted by white people. From 1958 to 1967, the Bureau of Indian Affairs officially encouraged adoption of Native American children by non-Native families. Approximately 80% of Native American families living on reservations lost at least one child to the foster-care system, according to data compiled by the National Indian Child Welfare Association.

Outrageously, even today Native children are taken from families and placed in foster care at much higher rates than white children. In Oklahoma in 2020, Native children represented more than 35% of those in foster care, though Native Americans make up only around 9% of the population.

ICWA was a critical first step. Avoiding family separation became the model for all foster care and adoption policies. However, without enforcement and monitoring it will not stop the theft of vulnerable children from their families, languages and heritage. If the current reactionary Supreme Court agrees to review Brackeen and overturns the ICWA, cultural genocide will continue and Native sovereignty will be at risk.

Pressing on.

On October 8, 2021, 180 tribal nations and 35 Native organizations, 25 states and the District of Columbia, Casey Family Programs and 10 child welfare and adoption organizations filed amicus briefs in support of the ICWA. They urge the U.S. Supreme Court to overturn the Fifth Circuit Court of Appeals decision in April, and endorse the constitutionality of the ICWA.

But the defense of tribal sovereignty must also be fought in the streets, at the pipelines, on the rivers, and in the deserts by a united front of all the targets of the right wing.