

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

NATIONAL COUNCIL FOR ADOPTION
BUILDING ARIZONA FAMILIES on behalf
of itself and its birth-parent clients, birth
parents D.V. and N.L., and baby boy T.W. by
and through his guardian ad litem PHILIP
(JAY) MCCARTHY, JR.,

Plaintiffs,

v.

SALLY JEWELL, in her official capacity as
Secretary of the United States Department of
the Interior, KEVIN WASHBURN, in his
official capacity as Assistant Secretary of
Indian Affairs, BUREAU OF INDIAN
AFFAIRS, and the UNITED STATES
DEPARTMENT OF THE INTERIOR,

Defendants.

Civil Action No. 1:15cv00675

**MEMORANDUM IN SUPPORT OF MOTION OF NATIONAL CONGRESS OF
AMERICAN INDIANS, ASSOCIATION ON AMERICAN INDIAN AFFAIRS,
AND NATIONAL CHILD WELFARE ASSOCIATION FOR LEAVE TO FILE BRIEF
AS AMICI CURIAE**

Plaintiffs in this case are private adoption organizations and individuals who challenge the validity of the Bureau of Indian Affairs' Guidelines for State Courts in Indian Child Custody Proceedings, 80 Fed. Reg. 10,146 (Feb. 25, 2015) (2015 Guidelines), and the constitutionality of the Indian Child Welfare Act of 1978 (ICWA or the "Act"), 25 U.S.C. § 1901 *et seq.* Defendants' Motion to Dismiss (Doc. 51) defends the Constitutionality of ICWA and the validity of the 2015 Guidelines and argues, among other things, that the Plaintiffs lack standing, have presented unripe claims, and have failed to state a claim.

The Indian Child Welfare Act and the protections that it provides for tribes and Indian families are of significant importance to *amici* and their members. As explained in the attached brief, Plaintiffs' challenges threaten to undermine both these protections and the unique trust responsibilities that the United States owes to Indian children and Indian tribes. *Amici* have considerable expertise in this area of law and child welfare practice and seek to file a brief in support of Defendants to aid the Court in its disposition of this case.

The National Congress of American Indians (NCAI) is the largest national organization addressing American Indian interests, representing more than 250 American Indian Tribes and Alaskan Native villages since 1944. As part of its efforts, NCAI has worked closely with state governments and organizations to develop productive models of state-tribal cooperation, including cooperation relating to Indian child welfare.

The Association on American Indian Affairs (AAIA) is a 93-year-old Indian advocacy organization that began its active involvement in Indian child welfare issues in 1967. AAIA studies were central to those legislative hearings and committee reports underlying the enactment of ICWA, and, at the invitation of Congress, AAIA was closely involved in the drafting of the Act. Since 1978, AAIA has continued to work with tribes to implement ICWA.

The National Indian Child Welfare Association (NICWA) is a non-profit membership organization established in 1987, which serves as a national voice for Indian children and families, including promoting compliance with the Indian Child Welfare Act. NICWA is committed efforts to protect and preserve ICWA, and promotes ICWA compliance through trainings and technical assistance, research, advocacy, and information sharing.

Amici agree with Defendants that this matter should be dismissed for the reasons stated in Defendants' Memorandum in Support of their Motion to Dismiss (Doc. 52). *Amici* write

separately to address the significant importance of ICWA and the Guidelines to Indian children, families, and tribes — matters that neither party has fully addressed. As explained in the attached brief, Congress enacted the Indian Child Welfare Act in response to the widespread abuses committed by state child welfare systems against Indian children and families.

Additionally, the 2015 Guidelines are necessary for uniform interpretation of the law because the Indian Child Welfare Act is implemented by state court systems. Revisions to the Guidelines were appropriate and necessary because social work practice and child welfare law has progressed considerably in the past thirty-six years.

Given the importance of the issue before this Court and the special expertise of *amici*, this *amici curiae* brief would assist the Court in its review of these complex issues. *See Tafas v. Dudas, et al.*, 511 F.Supp.2d 652, 659 (E.D. Va 2007) (“The Court has broad discretion in deciding whether to allow a non-party to participate as an *amicus curiae*”); *see also, Bryant v. Better Bus. Bureau of Greater Maryland, Inc.*, 923 F. Supp. 720, 728 (D. Md. 1996) (“The aid of *amici curiae* has been allowed at the trial level where they provide helpful analysis of the law, they have a special interest in the subject matter of the suit, or existing counsel is in need of assistance).

For the foregoing reasons, *amici* respectfully request that this Court grant leave to file the attached brief of *amici curiae*.

/ / /

Dated: September 18, 2015

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2015, that I electronically filed with the Clerk the foregoing using the Court's Electronic CM/ECF System and that service was thereby accomplished upon:

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