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OPINION | COMMENTARY

For This 6-Year-Old, the Law Sees Only Race

Lexi, who is 1.5% Choctaw, was taken from loving parents because they didn't share her ancestry.

Rusty Page carries Lexi on March 21 as family-services agents in Santa Clarita, Calif., arrive to take her away under a court order. *PHOTO: ASSOCIATED PRESS*

By **ADITYA DYNAR** and **TIMOTHY SANDEFUR**

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It is hard to imagine the anguish that Rusty and Summer Page must be experiencing. Their 6-year-old daughter Lexi, whom they had raised since taking her in as a foster

child four years ago, was wrenched away Monday and sent from her home in Santa Clarita, Calif., to live with another family hundreds of miles away in Utah—solely because of Lexi's race.

You read that right. Lexi is 1.5% Choctaw. A 40-year-old federal law called the Indian Child Welfare Act requires government officials to take children away from caring foster families and place them with Native American families they may never have even met. Simply because Lexi has a distant Native American ancestor, a Choctaw great-great-great-great grandparent on her father's side, she was taken from the Pages, who want to adopt her but aren't Indian. State and tribal authorities sent her from California to live with a couple in Utah instead.

The Goldwater Institute, where we work, has filed a civil-rights lawsuit, *Carter v. Washburn*, challenging the unconstitutional discrimination at the heart of the Indian Child Welfare Act. The law makes it harder to protect children with Indian heritage, no matter how slight, from abuse and find them permanent and loving adoptive homes. It's mind-boggling that this federal law enshrines rules of "separate but equal"—actually, separate and substandard—for one racial group. But that's what it does.

Normally, adoption law tries to serve the best interests of the child. But the Indian Child Welfare Act forces courts to disregard that rule and place children, regardless of their individual needs, with members of Native American tribes—even ones who have no connection to the children. Only in rare cases may judges place a child like Lexi with a family that may be white or black or Asian or Hispanic.

The Indian Child Welfare Act was written out of a concern that state courts were breaking up tribes by sending Native American children to live off-reservation. But four decades later, it penalizes Indian children by subjecting them to different and less favorable rules than other children. For instance, child-protection authorities can quickly take custody if they find evidence of abuse. But under this law, before taking custody of Indian children the officials must provide far more proof of abuse—which makes it harder to protect them from mistreatment.

Worse, the law gives tribes the power to intervene in any foster-care or adoption proceeding nationwide that involves a child of Indian heritage. That's why Lexi can have her fate determined by the Choctaw Nation in Oklahoma, a state she has never visited. The Multiethnic Placement Act makes it illegal to delay or deny adoption for racial reasons. But the Indian Child Welfare Act opens a loophole for Native American children, who are explicitly denied that protection.

Supporters of the legislation claim that children are better off being raised in their "native" culture. But the Constitution entitles American citizens (and all Indian children are citizens) to equal treatment under the law. Valuable as a cultural heritage might be, it is wrong for the government to deny them the legal protections accorded to all other children—including the right to have their cases decided on their individual circumstances instead of their ethnicity.

In *Brown v. Board of Education*, the Supreme Court ruled that creating a separate and substandard system for children of one race is repugnant to America's highest law. Fifty years later, it is unacceptable that children like Lexi—and the non-Indian parents who love them—are still subjected to disfavored treatment based on their ancestry.

Mr. Dynar is an attorney with the Goldwater Institute and represents the plaintiffs in Carter v. Washburn. Mr. Sandefur is the institute's vice president of litigation and the author of "The Conscience of the Constitution" (Cato Institute, 2014).