GILA RIVER INDIAN COMMUNITY
STATEMENT ON PACIFIC LEGAL FOUNDATION'S AMICUS BRIEF IN *BRACKEEN V. HAALAND*

Last week, the Pacific Legal Foundation—an organization recognized for its aggressive advocacy against Indian tribes over the past several years—filed an amicus brief in *Brackeen v. Haaland*, a case pending before the Supreme Court of the United States which challenges the sovereign status of tribes under the Indian Child Welfare Act. Anti-ICWA groups like PLF and the Goldwater Institute are challenging the sovereign status of tribes by attacking the constitutionality of ICWA, alleging that tribes have no sovereign interest in the health and welfare of tribal children.

PLF's brief focuses on a single dependency case—*Matter of C.J., Jr.*—involving the Gila River Indian Community and which took place in Ohio. To create a legal argument that would somehow fit within the legal considerations of the *Brackeen* case, PLF distorts what actually happened in the case to "fit" a universally rejected view of ICWA (that ICWA is race-based), which the Ohio court of appeals itself rejected when it considered the case on appeal and remanded it to the Franklin County Juvenile Court in 2018 with the express direction that ICWA be applied to the case.

C.J., Jr., who is an enrolled member of the Gila River Indian Community and whose father grew up in Sacaton, Arizona, on the Gila River Indian Reservation, was removed from their parents in January 2015. Although ICWA requires courts to promptly notify Indian tribes when tribal children are removed, and despite an express indication that C.J., Jr. had Pima heritage and that the case was subject to ICWA, neither the Ohio courts nor any parties to the case made any credible effort to notify the Community until July 2016, nearly a year and a half later.

After receiving the delayed notice, the Community quickly intervened in the case and learned that, although C.J., Jr. has numerous close family members in the Community (in Arizona), Ohio child welfare authorities had made no effort to locate those family members for placement and, instead, C.J., Jr. was placed in stranger foster care. In fact, the only family members willing to act as a permanent placement for C.J., Jr. were located in Arizona. And, after the Community intervened, C.J., Jr. was able to meet those family members.

PLF's brief falsely portrays ICWA as causing delays in C.J., Jr.'s and other cases. The delays in C.J., Jr.'s case were caused not by ICWA, but the failure of the Ohio courts and child welfare agencies to timely notify the Community of the case and an unprecedented level of obstruction and bias against the Community from the court-appointed guardian *ad litem* (who filed two appeals of the juvenile court's decisions and moved to delay resolution of the appeals). The Community successfully sought removal of the guardian for misconduct and bias, but only after lengthy delays. PLF is fully aware of this, as one of the attorneys who signed their amicus brief in *Brackeen v. Haaland* represented the guardian *ad litem* who was removed from the case.

The Community repeatedly objected to delays and pleaded with the juvenile court to expedite the case, without success. The first action PLF took in this case, on the other hand, was to show up at a court hearing on November 13, 2018 and request a delay of more than two months in the proceedings. PLF further delayed the proceedings by continuing to raise equal protection arguments that had already been considered and rejected by the appellate court, filing numerous motions, and making repeated attempts to obstruct the Community's attorneys from appearing in the case.

The Community's goal in this case was to have the Ohio courts properly apply ICWA and make a decision in the best interest of C.J., Jr., following a fair hearing, which is what the Franklin County Juvenile Court finally did in late 2019. Unfortunately, but for the delayed notification to the Community, the actions of the removed guardian *ad litem*, and the delays caused by PLF, the case would have concluded much sooner. Had ICWA been followed and the Community been properly notified when the case was filed, the case could have been resolved in as little as three or four months.

Like the Goldwater Institute before it in a misleading press issued after the Ohio appellate decision in 2018, PLF refers to ICWA's requirements as "substandard," when, in fact, numerous child welfare organizations have referred to ICWA as the "gold standard" for child welfare laws. In cases where ICWA is followed and anti-Indian organizations like PLF and Goldwater are not involved, the Community has experienced a high level of cooperation from state courts and child welfare agencies in successfully resolving child welfare cases.

A recurring theme in the ICWA cases in which Goldwater and PLF are involved are claims of superior ability to care for Indian children and smacks of the racial superiority bias inherent in the cruel Boarding School era for Indian children, a tragic legacy for tribes across our country. These litigation strategies demonstrate that PLF is not seeking to further the best interests of Indian children, but only its own interests in pursuing an anti-Indian policy designed to undercut tribal sovereignty at any opportunity.

The Community is considering and will take appropriate action to correct the record created by this rankly opportunistic amicus brief filed by PLF, and will continue to fight for the interests of Community and Native American children at every opportunity to protect and further the tribal sovereignty we have fought so hard to attain.