

MICHIGAN NALSA: ICWA DISCUSSION

INDIGENANT PEOPLES' DAY 2022





NALSA
at Michigan

INDIAN CHILD WELFARE ACT

WHAT YOU NEED TO KNOW -- IT'S A LOT:

IN 1978, CONGRESS FOUND THAT 25-35 PERCENT OF ALL INDIAN CHILDREN HAD BEEN REMOVED FROM THEIR HOMES.

ABOUT 90 PERCENT OF THOSE CHILDREN WERE PLACED IN NON-INDIAN FOSTER AND ADOPTIVE HOMES.

CONGRESS FOUND THAT STATE COURTS AND AGENCIES ENGAGED IN SYSTEMIC RACISM LEADING TO THOSE OUTCOMES.

JURISDICTIONAL PREDICATES:

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

INDIAN BABIES

HOW TO KEEP THEM WELL

AN "INDIAN CHILD" IS ONE WHO IS
A MEMBER OF A FEDERALLY
RECOGNIZED TRIBE, OR ELIGIBLE
FOR MEMBERSHIP.

ICWA APPLIES TO
"CHILD CUSTODY"
MATTERS ON AN
"INDIAN RESERVATION."

CHILD CUSTODY MATTERS
INCLUDE EMERGENCY
REMOVALS AND ADOPTION
PROCEEDINGS.



WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

JURISDICTION:

INDIAN TRIBES HAVE
EXCLUSIVE JURISDICTION OVER
CHILD CUSTODY MATTERS
INVOLVING INDIAN CHILDREN
DOMICILED ON INDIAN
RESERVATIONS.

INDIAN TRIBES HAVE
PRESUMPTIVE
JURISDICTION OVER
INDIAN CHILD NOT
DOMICILED ON INDIAN
RESERVATIONS.

STATE COURTS SHOULD
TRANSFER CASES TO TRIBAL
COURT UNLESS THE INDIAN
PARENT OBJECTS OR THERE
IS GOOD CAUSE TO THE
CONTRARY.

BATH THE BABY EVERY DAY.

PROCEDURE:

STATES ARE OBLIGATED TO GIVE NOTICE TO INDIAN TRIBES.

INDIAN TRIBES HAVE A RIGHT TO INTERVENE.

INDIAN PARENTS ARE ENTITLED TO NOTICE, A MEANINGFUL OPPORTUNITY TO BE HEARD, AND AN ATTORNEY — PRIOR TO ICWA, THEY WERE NOT ENTITLED TO ANY OF THESE THINGS.

INDIAN BIO PARENTS MAY NOT VOLUNTARILY RELINQUISH PARENTAL RIGHTS OUTSIDE THE PRESENCE OF A JUDGE.

ONCE A STATE COURT HAS REASON TO BELIEVE A CHILD IS AN INDIAN CHILD, THE STATE COURT PROCEEDINGS MUST BE STAYED PENDING NOTICE TO THE TRIBE.

NORMAL BABY PROPERLY DRESSED.

S STANDARDS:

INDIAN PARENTAL RIGHTS MAY NOT BE TERMINATED UNLESS THE COURT HEARS TESTIMONY FROM A QUALIFIED EXPERT WITNESS.

INDIAN PARENTAL RIGHTS MAY NOT BE TERMINATED UNLESS THE STATE PROVES BEYOND A REASONABLE DOUBT THAT IT IS IN THE BEST INTERESTS OF THE INDIAN CHILD.

INDIAN PARENTAL RIGHTS MAY NOT BE TERMINATED UNLESS THE STATE SHOWS IT HAS PROVIDED ACTIVE EFFORTS TO SEEK REUNIFICATION OF THE INDIAN FAMILY.



GIVE BABY PLENTY OF COOL, BOILED WATER.

CHALLENGES:

MISERABLY LOW
COMPLIANCE RATE BY
STATES.

THE EXISTING
INDIAN FAMILY
"EXCEPTION."

EXPLOITATION OF MEDIA THROUGH
DOG WHISTLING.

FIFTH AND FOURTEENTH
AMENDMENT EQUAL
PROTECTION CHALLENGES.

NON-DELEGATION
DOCTRINE
CHALLENGE.

TENTH AMENDMENT
COMANDEERING
CHALLENGES.

FEDERAL TITLE IV-E FUNDING
LIMITATIONS AND PERVERSE
INCENTIVES.

NO ATTORNEY
FEES AWARDS.

DIFFICULTY IN PURSUING
APPELLATE REVIEW.

FOSTER-TO-ADOPT
PARENTS.

A NAVAJO CRADLE.

BRACKEEN V. HAALAND

WHAT YOU NEED TO KNOW:

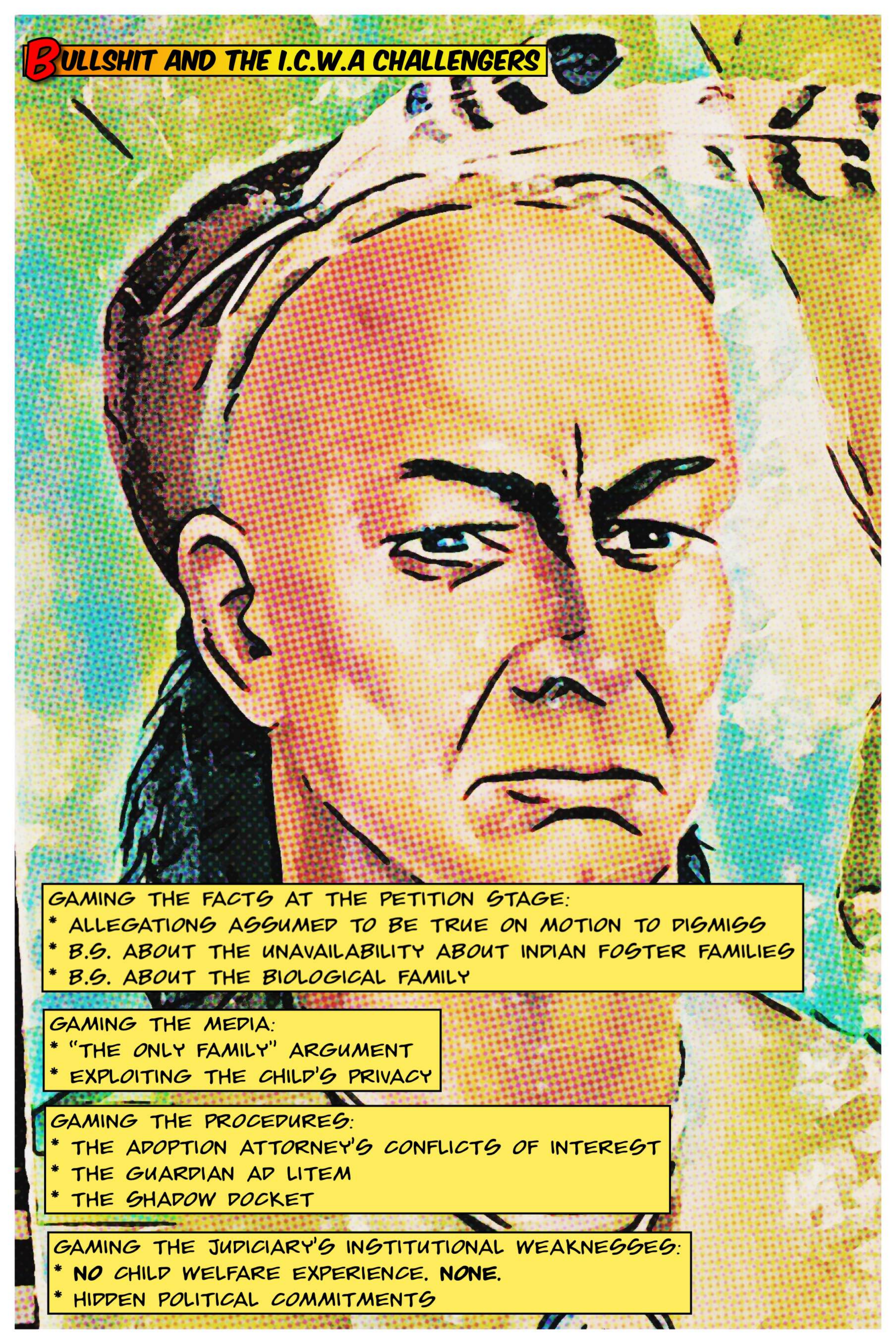
ICWA IS CONSTITUTIONAL
— MOSTLY

NOTICE, QUALIFIED EXPERT WITNESS, PLACEMENT
PREFERENCES, AND ACTIVE EFFORTS VIOLATED THE
ANTI-COMMANDEERING PRINCIPLE

THE PLACEMENT
PREFERENCES LISTING OF
"OTHER INDIAN FAMILIES"
VIOLATES THE EQUAL
PROTECTION COMPONENT
OF THE FIFTH AMENDMENT

STATES AND
FOSTER/ADOPTIVE
COUPLES HAVE
STANDING

TARRANT
COUNTY, TX.
COURTHOUSE



BULLSHIT AND THE I.C.W.A CHALLENGERS

GAMING THE FACTS AT THE PETITION STAGE:

- * ALLEGATIONS ASSUMED TO BE TRUE ON MOTION TO DISMISS
- * B.S. ABOUT THE UNAVAILABILITY ABOUT INDIAN FOSTER FAMILIES
- * B.S. ABOUT THE BIOLOGICAL FAMILY

GAMING THE MEDIA:

- * "THE ONLY FAMILY" ARGUMENT
- * EXPLOITING THE CHILD'S PRIVACY

GAMING THE PROCEDURES:

- * THE ADOPTION ATTORNEY'S CONFLICTS OF INTEREST
- * THE GUARDIAN AD LITEM
- * THE SHADOW DOCKET

GAMING THE JUDICIARY'S INSTITUTIONAL WEAKNESSES:

- * NO CHILD WELFARE EXPERIENCE. NONE.
- * HIDDEN POLITICAL COMMITMENTS



WHAT HAPPENS WHEN
YOU SEARCH FOR
"COMMANDEERING"



TEXAS SOCIAL
WORKERS ENGAGED IN
EITHER ACTIVE OR
REASONABLE EFFORTS

00

GOLDWATER
INSTITUTE



Bara
Goldwater
Voted
ICW

Indian adoption 'rip-off' rap

ON (AP) — Child Welfare could end the Indian babies tion, a con-

subcommittee tives of the uinault and es Thursday half of a bill iake it more state agency dian children and encourage t of Indian dian homes.

resource that our chil- greatest re- that without e no future," e of the Puyal- the House In- and public- mittee. "For ars we were hing our chil- ken from our nilies."

show that in in the United han a quarter children are n the Indian v. state agen-

cies or through other means.

The Indian Child Welfare Act, which would establish new adoption standards reflecting the values of Indian society, passed the Senate in November and now faces action in the House.

Mrs. LaPointe, coordinator of Social Service for Child Welfare for the Puyallup tribe, testified that Indians who were adopted by non-Indians frequently come to the tribe for help in locating their "lost" families.

She cited one case in which an 18-year-old woman appealed to the Puyallup tribe for help and the young woman was brought to Mrs. LaPointe.

"While visiting (with her) I realized she was my second cousin," Mrs. LaPointe said. "Her mother had died of acute alcoholism years before. I believe she drank herself to death because she could not face the shame

and heartbreak of giving up her children."

Except for administration witnesses, most testimony at the hearing supported the bill. Many speakers suggested minor revisions.

Vera Harris, director of the Tsapah Child placement-protection agency of the Tacoma Indian Center, said she believes the bill should be amended to allow adoption of Indian children only by Indians. Too often, she said, non-Indians are

not sensitive to the v the Indian people.

The Carter adm tion opposes the n but endorses its go ministration rep tives suggested that programs might be accomplish many bill's objectives.

Rick Lavis, deput tant secretary for In fairs in the Depart Interior, said the ac ration will offer su legislation next mon

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1970S ERA
ICWA NEWS

Indian Child Welfare Act will be challenged in court

OKLAHOMA CITY, Okla. (AP) — The constitutionality of the 1978 federal Indian Child Welfare Act will be challenged next month before a three-judge panel in Oklahoma County District Court.

The challenge stems from a child custody case in western Oklahoma involving an Indian child whom state welfare officials declared deprived.

The child's parents attempted to use the act's provisions to have the case resolved in tribal court, but the welfare department sought the challenge through Oklahoma County District Attorney Andrew Coats.

Coats is bringing the test case because the welfare department is in his district.

The federal act allows custody cases involving Indian children to be handled in state or tribal courts, depending on the preference of the family and tribe.

At the State of Oklahoma contends "The act provides different standard in adjudicating a deprived Indian child from a non-Indian child, a standard which rests solely on

Stanek's

Gift
Floral

AND . . .
FINALLY . . .
BRACKEEN*

FOUR PETITIONS — TWO
FROM UNITED STATES AND
FOUR TRIBES — TWO FROM
TEXAS AND FOSTER
PARENTS

FIFTH CIRCUIT (EN BANC, TIED 8-8 ON MOST THINGS):

1) I.C.W.A NOTICE, QUALIFIED EXPERT WITNESS, ACTIVE EFFORTS,
AND REPORTING UNCONSTITUTIONAL UNDER TENTH AMENDMENT
ANTI-COMMANDEERING

2) "INDIAN FAMILIES" IN PLACEMENT PREFERENCES IS
UNCONSTITUTIONAL UNDER EQUAL PROTECTION COMPONENT
OF FIFTH AMENDMENT DUE PROCESS CLAUSE

3) ALL PARTIES HAVE STANDING EVEN THOUGH
ALL ADOPTIONS ARE COMPLETE

4) OTHER CONSTITUTIONAL CHALLENGES
ROOTED IN CONGRESSIONAL POWERS AND
NON-DELEGATION DOCTRINE ARE REJECTED

5) "GOOD CAUSE" BURDEN
OF PROOF IN I.C.W.A. REGS
INVALID

FEDERAL/TRIBAL PETITIONS:
SEEKING REVIEW ONLY OF
PORTIONS OF I.C.W.A.
STRUCK DOWN BY FIFTH
CIRCUIT; ALTERNATIVELY,
SEEKING VACATURE OF
PROCEEDINGS FOR LACK OF
ARTICLE III STANDING

GRANTED
FEBRUARY 28,
A.K.A. DAY OF
DOOM

STATE/FOSTER PARENTS:
SEEKING OVERRULING OF
ALL OF I.C.W.A.

~~*MIGHT ALSO HAVE
BEEN GRANTED OR
NOT ON FEBRUARY 22~~

ADDITIONAL RESOURCES

*FLETCHER & SINGEL,
LAWYERING THE INDIAN CHILD
WELFARE ACT, 120 MICH. L.
REV. 1755 (2022)

* FLETCHER, POLITICS, INDIAN
LAW, AND THE CONSTITUTION,
108 CALIF. L. REV. 495 (2020)

*FLETCHER, INDIAN CHILDREN
AND THE FIFTH AMENDMENT,
80 MONT. L. REV. 601 (2019)

*FLETCHER & SINGEL, INDIAN
CHILDREN AND THE FEDERAL-
TRIBAL TRUST RELATIONSHIP,
95 NEB. L. REV. 885 (2017)



COUNCIL OF TREES,
GREENSKY HILL

MLAW NALSA PRESENTS:

ICWA DISCUSSION

What does the upcoming Supreme Court case *Brackeen v. Haaland* mean for the Indian Child Welfare Act and Indian law more broadly?

Discussion and Q&A
with Professors
Matthew Fletcher
& Leah Litman



Indigenous Peoples' Day
Oct. 10 at 12-1pm
Jeffries 1225

Food will be provided!

