

SAL Covid hypomane

Serious issues

Third

Modifieds hypo-on-rez

Dractical Problems

- 1 And suppose Congress says Indians -- the Indian
- 2 population on the whole has more people with
- 3 complications -- with -- with factors that make
- 4 them more vulnerable to serious consequences
- from getting COVID, and, therefore, they should
- get preference over others in the -- in the
- 7 distribution of vaccines.

MR. GERSHENGORN: So, Your Horz, the

AGAIN, THE TEGT IS WHETHER THE ACT OF CONGREGG IS RATIONALLY RELATED TO THE FULFILLMENT OF THE TRUGT REGPONGIBILITY. THE ANGWER TO YOUR GPECIFIC QUESTION IS THAT IS DEPENDE ON THE POLICY DETERMINATION OF CONGREGG. YOUR HYPOTHETICALS ARE IRRELEVANT BECAUSE YOU PON'T OFFER ANY SUGGESTED CONGREGGIONAL POLICY JUDGMENTS. ALSO, FACIAL CHALLENGE.



BL 2) Mand college admissions

EV More difficult [A]

JUSTICE KAVANAUGH: How about Congress decides for the -- to help the tribes and tribal members that it's going to mandate that states give a preference in college admissions to American Indians?

MR. KNEEDLER: Again, I think that

ANOTHER EAGY ONE. ABGOLUTELY YEG CONGREGG COULD GIVE A PREFERENCE TO NATIVE COLLEGE APPLICANTS. LONG HIGTRY OF GUTTING TRIBAL EDUCATIONAL PROGRAMS, BOARDING SCHOOLS, ADOPTION PROJECT, PUNIGHING NATIVE CHILDREN FOR GPEAKING THEIR LANGUAGE. GUCH AN EAGY QUESTION.



St. former at time St. tomorows

MR. KNEEDLER: Seriously misguided.

JUSTICE ALITO: -- if it were -- yeah.

4 Okay. If it were to do it tomorrow, would that

fall outside Congress's plenary power?

MR. KNEEDLER: Well, I -- it has to be

7 -- the plenary power, I mean, I think there are

8 at least two -- two things to bear in mind about

9 this. I think Congress, when dealing with a

10 tribe in its political capacity, has a great

GTILL NOT RATIONALLY
RELATED TO THE
FULFILLMENT OF THE
TRUGT REGPONGIBILITY.

GO THE RATIONS JOKE?
NOT FUNNY? TOO GOON?
I MEAN, TRAGEGY PLUS
TIME EQUALS COMEDY,
RIGHT?



Dr Individual prembers,
bud acts at this are
bud acts at this are
not rationally related

SA differs from order rat. bass

EK year but defer to cong.

BS tribal number children is

JUSTICE ALITO: Yeah, in equal protection. What's the -- what's the level of scrutiny for a classification that disfavors Indians, a rational basis?

MR. KNEEDLER: Well, as I same before,

15 II if what Congress does is act on the tribe

6 in a political manner, saying your -- you know,

17 your -- your -- your powers are diminished or

18 expanded, that -- that's a political

13

YES, SEE, FOR EXAMPLE, THE MAJOR ORIMES ACT.
AGAIN, THE TEST IS RATIONALLY RELATED TO THE
FULFILLMENT OF THE TRUST RESPONSIBILITY.



CS Indian family want to
adopt but not Indian
nembers our want them
to
Does it trop bost Interests

C long adopted baseline isles

A non-Indian couple comes forward and says we would like to adopt the six-month-old 17 baby, and they check all the boxes under, you 18 know, best interests of the child. In other 19 words, in normal circumstances, this would be a 20 perfect placement for the child. But non-family members of the tribe 22 say that, no, they think it would be better for the child to be raised with the trib on the 23 24 reservation.

Does - that priority trump the



SHITTING ON OUR PARADE.

HAALAND v. BRACKEEN

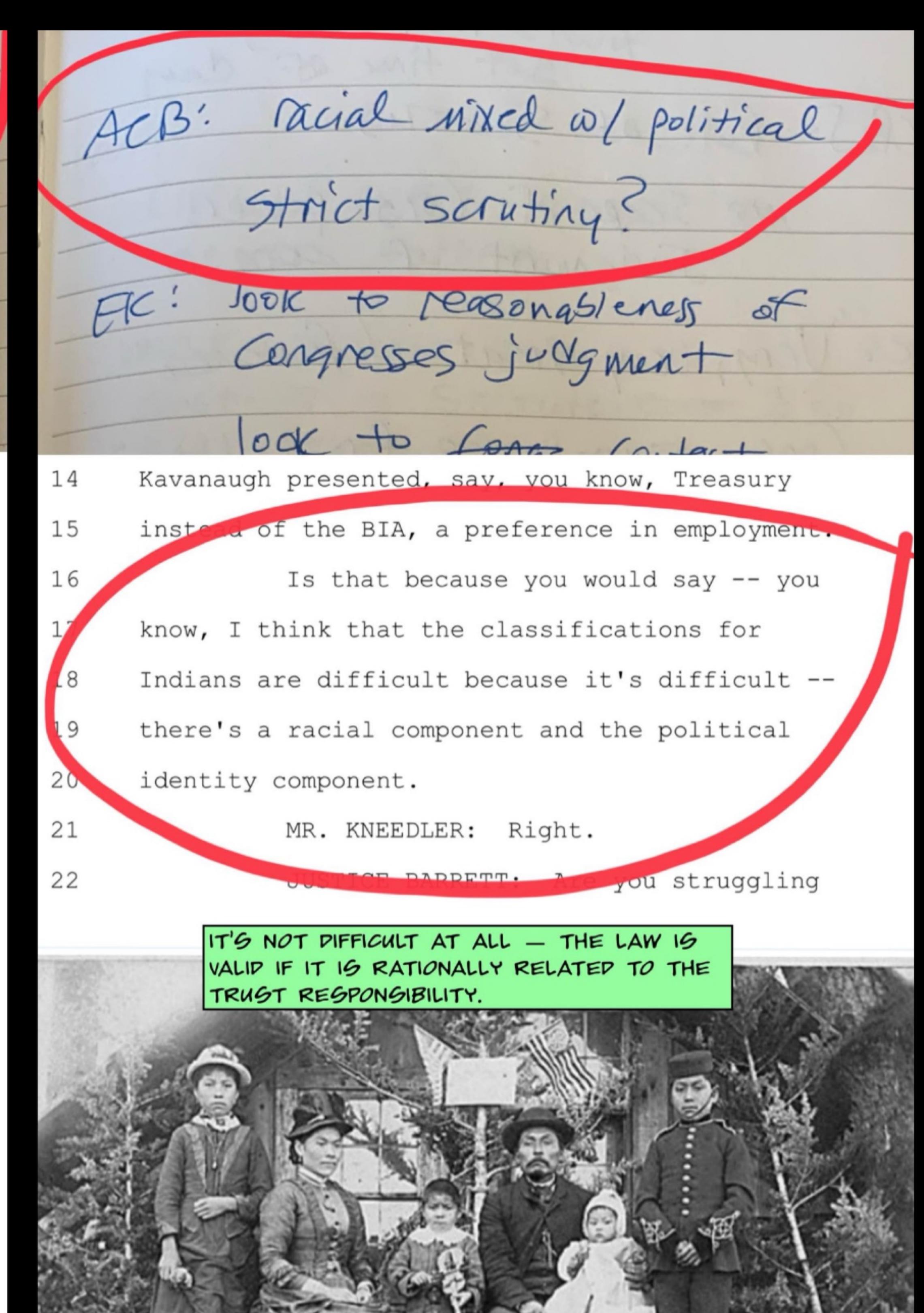
KAVANAUGH, J., concurring

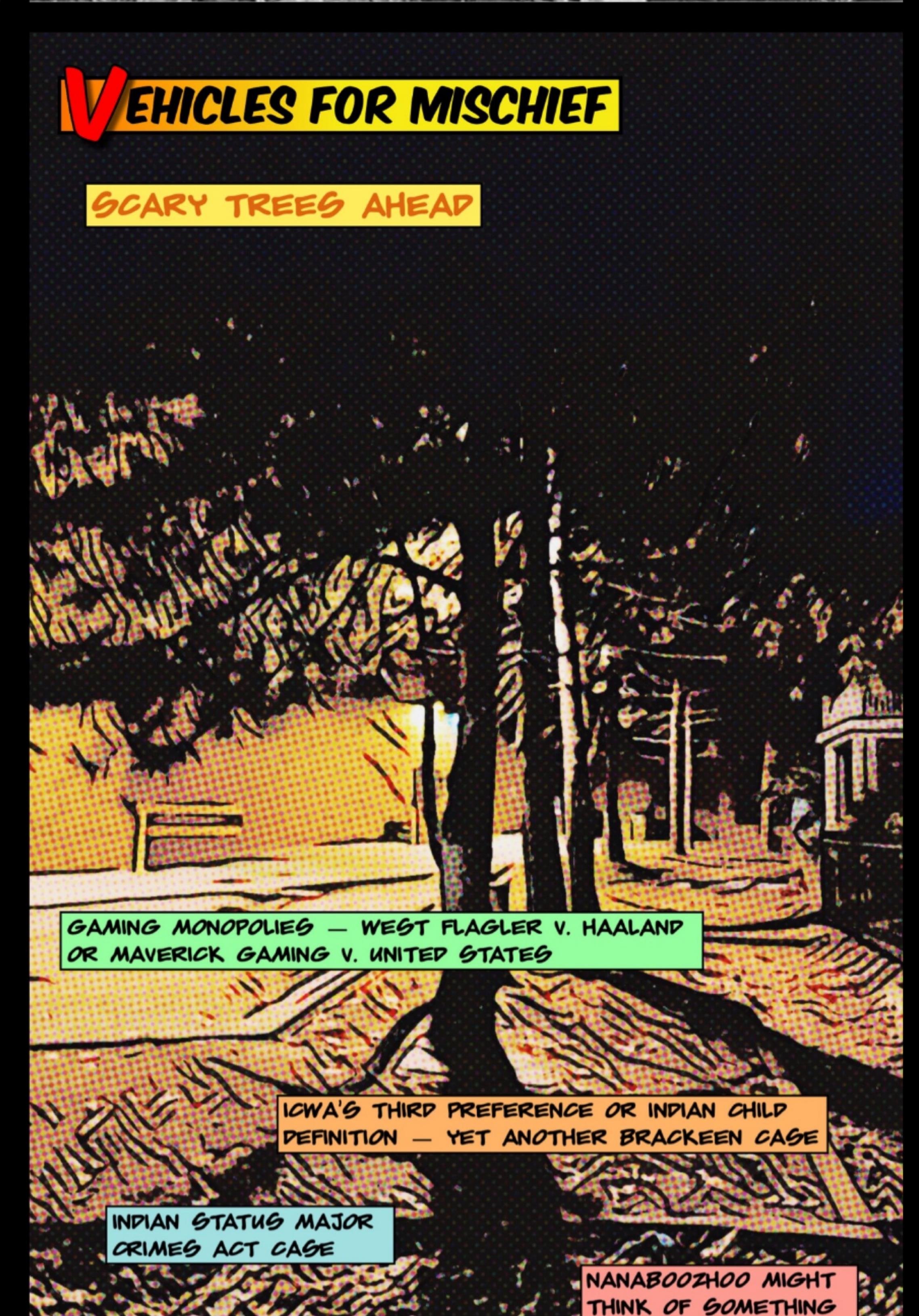
against federal parties lack standing to raise the equal protection issue. So the equal protection issue remains undecided.

In my view, the equal protection issue is serious. Under the Act, a child in foster care or adoption proceedings may in some cases be denied a particular placement because o the child's race—even if the placement is otherwise determined to be in the child's best interests. And a prespective foster or adoptive parent may in some cases be denied the opportunity to foster or adopt a child because of the prespective parent's race. Those scenario raise significant questions under bedrock equal rotection

to conduct **BRACKEEN AND WEST FLAGLER** and not off-reservation gaming operations. 71 F. 4th 1059, 1062, 1065–1068 (2023); Response in Opposition to Application for Stay 7–10, 13–14. If the compact authorized the Tribe to conduct off-reservation gaming operations, either directly or by deeming off-reservation gaming operations to somehow be on-reservation, then the compact would likely violate the Ladian Gaming Regulatory Act, as the District Court explained. 573 F. Supp. 3d 260, 272–274 (DC 2021); see 25 U. S. C. §§2710(d)(1), (d)(8)(A).

To the extent that a separate Florida statute (as distinct from the compact) authorizes the Seminole Tribe—and only the Seminole Tribe—to conduct certain off-reservation gaming operations in Florida, the state law raises serious equal protection issues. See Students for Fair Admissions Inc. v. President and Fellows of Harvard College, 600 U.S. 181, 206 (2023); Adarand Constructors, Inc. v. Peō., 515





ELGE TO TEGT UG

The Government 16 wrong to Rely on Elk Because Elk as not 18 Wrong for At Least Two Reasons:

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11 the BIRTHRIGHT CITIZENSHIP CASES

12 the adontion of the Amendment Justice Miller wrote: "If a stranger or traveller passing The Pepartment of Justice Argues That I elk v. wilking confirms that there is no BIRTHRIGHT CITIZENSHIP FOR CHILDREN BORN

10 The Government 16 wrong to rely on elk Because elk as not 19 wrong for At Least Two Reasons:

11 Use Survey Courts decision in Elk William 112 U.S. 04 (1884) confirms that the

The Supreme Court's decision in *Elk v. Wilkins*, 112 U.S. 94 (1884), confirms that the children of non-resident aliens lack a constitutional birthright to citizenship. In *Elk*, the Court held that, because members of Indian tribes owe "immediate allegiance" to their tribes, they

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are not "subject to the jurisdiction" of the United States and are not constitutionally entitled to citizenship. *Id.* at 102. Indian tribes occupy an intermediate position between foreign States and U.S. States. *See Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831) (Marshall, C.J.) (describing Indian tribes as "domestic dependent nations"). The United States' connection with the children of illegal aliens and temporary visitors is weaker than its connection with members of Indian tribes. If the latter link is insufficient for birthright citizenship, the former certainly is.

1. THE CONSTITUTION DOES NOT CREATE A RACIALIZED HIERARCHY OF CATIZENSHIP — THAT WAS DRED GOOTT AND NOW THAT'S OVER

2. ELK FALGELY EQUATED
"ALLEGIANCE" WITH CITIZENGHIP
AND IGNORED THE GPECIAL
TRIBAL-FEDERAL RELATIONGHIP

