

Jenner & Block Team Secures Supreme Court Victory for Indian Country in Indian Child Welfare Act Case

News

June 15, 2023

Today, the United States Supreme Court ruled in favor of the intervening tribes in *Brackeen v. Haaland*, a case concerning the constitutionality of the Indian Child Welfare Act (ICWA). Jenner & Block represented three tribes in the case: Cherokee Nation, Morongo Band of Mission Indians, and Oneida Nation. The 7-2 decision upholds ICWA in its entirety.

“It was an honor to advocate for the tribes in this case,” said Partner Ian Heath Gershengorn, who argued the case before the Court in November 2022. “The Court’s decision is a major victory for Native tribes and children. We are pleased that the justices decided to uphold the Indian Child Welfare Act, reaffirming centuries of legal precedent and other existing areas of tribal law.”

“Child welfare advocates and constitutional scholars regard ICWA as the gold standard of child welfare law,” said Partner Keith Harper, who led the team. “Our team is proud to have been part of the fight for Native tribes, children, and the future of Indian Country. We will continue to advocate for Native American tribes and individual Indians in matters critical to the growth, prosperity, and advancement of tribal communities.”

Throughout the case, ICWA received support from a coalition of bipartisan elected leaders, child welfare advocates, and experts. President Biden released a statement in support of the Supreme Court’s decision shortly after the Court’s ruling.

In addition to Keith and Ian, the Jenner & Block team representing the tribes included Associates Lenny Powell, Victoria Hall-Palerm, and Illyana Green.

In a statement, the tribes at the center of the case noted:

Statement from Defending Tribes on *Brackeen v. Haaland* Decision Upholding Indian Child Welfare Act

Today, the US Supreme Court issued its decision on *Brackeen v. Haaland*, upholding the constitutionality of the Indian Child Welfare Act (ICWA). In response, Cherokee Nation Principal

Chief Chuck Hoskin, Jr., Morongo Band of Mission Indians Chairman Charles Martin, Oneida Nation Chairman Tehassi Hill, and Quinault Indian Nation President Guy Capoeman issued the following statement:

“Today, the Supreme Court once again ruled that ICWA, heralded as the gold standard in child welfare for over 40 years, is constitutional. Today’s decision is a major victory for Native tribes, children, and the future of our culture and heritage. It is also a broad affirmation of the rule of law, and of the basic constitutional principles surrounding relationships between Congress and tribal nations. We hope this decision will lay to rest the political attacks aimed at diminishing tribal sovereignty and creating instability throughout Indian law that have persisted for too long.

“The Court once again demonstrated that it understands the legitimacy of ICWA and what it means for tribes, families, and children. By ruling on the side of children’s health and safety, the US Constitution, and centuries of precedent, the justices have landed on the right side of history. With these latest political attacks on ICWA now behind us, we hope we can move forward on focusing on what is best for our children.”

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