

RESOLUTION OF THE
NAABIK'ÍYÁTI' STANDING COMMITTEE
24th NAVAJO NATION COUNCIL -- Fourth Year, 2022

AN ACTION REQUESTING THE STATE OF ARIZONA AND STATE OF COLORADO TO DEVELOP, IN CONSULTATION WITH THE NAVAJO NATION, AN INDIAN CHILD WELFARE ACT TO BE ENACTED UNDER STATE LAW

WHEREAS:

- A. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council empowered to represent the Navajo Nation at local, state and federal levels on proposed legislation, funding and other actions affecting health, environmental health, social services, education, veteran's services, employment, training and labor. 2 N.N.C. § 401(B)(7).
- B. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and as such empowered the Naabik'íyáti' Committee to coordinate all request for information, appearances and testimony relating to proposed county, state and federal legislation impacting the Navajo Nation. 2 N.N.C. §§ 700(A), 701(A)(6).
- C. In 2018, a federal district court in Texas held that the Indian Child Welfare Act (ICWA) violated the United States Constitution. In 2019, in response to appeals brought by the federal government and the intervening tribal nations at that time (the Cherokee Nation, Morongo Band of Mission Indians, Oneida Nation, Quinault Indian Nation, and the Navajo Nation), a three-judge panel from the Fifth Circuit Court of Appeals reversed that decision, reaffirming the constitutionality of the ICWA. The plaintiffs then petitioned the Fifth Circuit Court of Appeals for a rehearing en banc.
- D. On April 6, 2021, the United States Fifth Circuit Court of Appeals issued its en banc decision in *Brackeen v. Haaland*. The Fifth Circuit Court of Appeals was evenly split on the constitutionality of ICWA and the Bureau of Indian Affairs ICWA guidelines.
- E. The Navajo Nation filed a petition for certiorari to the United States Supreme Court, aware that the Fifth Circuit Court's *Brackeen* decision is not applicable or binding within the States of Arizona or Colorado.
- F. In addition to the Navajo Nation, four (4) groups of parties filed petitions for certiorari seeking review of the Fifth Circuit Court of Appeals' en banc decision in *Brackeen*. The

four (4) groups include the following: (1) the Brackeens and other non-Indian foster/adoptive families; (2) the State of Texas; (3) Secretary of Interior Haaland and several other federal officials; and (4) the Cherokee Nation, the Oneida Nation, the Quinault Nation, and the Morongo Band of Mission Indians.

- G. Like the Navajo Nation, each party seeks review of issues ruled on by the Fifth Circuit. The State of Texas specifically seeks review of the ruling that certain parts of the ICWA do not violate the "Anti-Commandeering" doctrine of the U.S. Constitution, which prohibits Congress from requiring state agencies to comply with federal requirements. The federal parties and tribes seek review of the part of the ruling that certain other parts of ICWA do violate the "Anti-Commandeering" doctrine.
- H. The Supreme Court granted the certiorari, and on November 9, 2022, held oral arguments on the constitutionality of ICWA in *Brackeen v. Haaland*. Once the Supreme Court issues its opinion, the decision will be binding throughout the United States, and upon the Navajo Nation, because the ICWA is a federal statute.
- I. An Adoption of a state-level ICWA in the State of Arizona and State of Colorado will provide the needed protections for Indian children and their families that are currently threatened by the *Brackeen* case. Notably, a state ICWA law will not affect the U.S. Constitution's "Anti-Commandeering" doctrine in any way, because of the state character of such a law.
- J. Where ICWA protections ensure the preservation of culture and language, and strengthens the identity of Navajo children and their connection to the land, which is in the best interest of Navajo children, by first considering placement with members of the Navajo Nation.
- K. Based on the facts stated herein, the Navajo Nation strongly urges that the State of Arizona and State of Colorado, in consultation with the Navajo Nation through its ICWA Program and Department of Justice, to develop a state-level ICWA to be enacted as state law.

NOW, THEREFORE, BE IT RESOLVED THAT:

- A. The Navajo Nation hereby requests that the State of Arizona and State of Colorado, in good faith consultation with the Navajo Nation's ICWA Program and the Navajo Nation Department

of Justice, develop a state-level ICWA to be enacted as state law.

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 19 in Favor, and 00 Opposed, on this 27th day of December 2022.



Honorable Otto Tso, Chairman
Naabik'íyáti' Committee

12.29.2022

Date

Motion: Honorable Paul Begay, Jr.
Second: Honorable Jimmy Yellowhair

Chairman Otto Tso not voting

NAVAJO NATION

1415

12/27/2022

Naabik'iyati Committee Special Meeting

10:06:40 PM

Amd# to Amd#

New Business: Item A.

PASSED

MOT Begay, P

CONSENT AGENDA; (9)Legislations:

SEC Yellowhair

0231-22,0253-22,0254-22,0262-22,
0263-22,0265-22,0266-22,. . .

Yeas : 19

Nays : 0

Excused : 3

Not Voting : 1

Yea : 19

Begay, E

Crotty

James, V

Tso, E

Begay, K

Daniels

Slater, C

Walker, T

Begay, P

Freeland, M

Smith

Wauneka, E

Brown

Halona, P

Stewart, W

Yellowhair

Charles-Newton

Henio, J

Tso, D

Nay : 0

Excused : 3

Tso, C

Nez, R

Damon

Not Voting : 1

Yazzie

Presiding Speaker: Tso, O

