

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0254-22_

SPONSOR: Carl R. Slater

TITLE 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.

Date posted: December 15, 2022 at 9:29 PM

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LEGISLATIVE SUMMARY SHEET
Tracking No. 0254-22

DATE: December 15, 2022

TITLE OF RESOLUTION: AN ACTION REQUESTING THE STATE OF ARIZONA AND STATE OF COLORADO TO START DEVELOPING, WITH CONSULTATION WITH THE NAVAJO NATION, AN INDIAN CHILD WELFARE ACT TO BE ENACTED UNDER STATE LAW.

PURPOSE: This resolution, if approved, will request that Arizona and Colorado work with the Navajo Nation to develop a state ICWA law.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 12-20-22
Eligible for Action: 12-21-22

PROPOSED STANDING COMMITTEE RESOLUTION
24th NAVAJO NATION COUNCIL – Second Year, 2022

INTRODUCED BY

(Prime Sponsor)



TRACKING NO. 0254-22

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'iyati' Committee as a Navajo Nation Council standing committee and as such empowered the Naabik'iyati' 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.

1 Constitution's "Anti-Commandeering" doctrine in any way, because of the state
2 character of such a law.

3 J. Where ICWA protections ensure the preservation of culture and language, and
4 strengthens the identity of Navajo children and their connection to the land, which is in
5 the bests interest of Navajo children, by first considering placement with members of
6 the Navajo Nation.

7 K. Based on the facts stated herein, the Navajo Nation strongly urges that the State of
8 Arizona and State of Colorado, in consultation with the Navajo Nation through its
9 ICWA Program and Department of Justice, to develop a state-level ICWA to be
10 enacted as state law.

11
12 **NOW, THEREFORE BE IT RESOLVED THAT:**

13 A. The Navajo Nation hereby requests that the State of Arizona and State of Colorado, in
14 good faith consultation with the Navajo Nation's ICWA Program and the Navajo
15 Nation Department of Justice, develop a state-level ICWA to be enacted as state law.