

THE NATIONAL NATIVE AMERICAN BAR ASSOCIATION

RESOLUTION # 2019-02

TITLE: IN SUPPORT OF UPHOLDING THE INDIAN CHILD WELFARE ACT (ICWA)

WHEREAS, the National Native American Bar Association (“NNABA”) was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA promotes and addresses social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

WHEREAS, Congress passed the Indian Child Welfare Act (“ICWA”) in 1978 to protect Indian culture and tribal integrity from the systematic removal of Indian children by public and private agencies;¹ and

WHEREAS, prior to the passage of ICWA, Indian children were placed in foster care and adoptive homes at a rate nineteen (19) times higher than non-Indian children, and in some states, eighty-five percent (85%) of all Indian children were placed in non-Indian homes;² and

WHEREAS, ICWA is recognized as the gold standard for child welfare policy and practice and should be uniformly applied to all Indian children;³ and

WHEREAS, for 40 years, ICWA has protected Indian children by ensuring stability and security within Indian families, and guaranteeing tribal governments, with their state partners, have a role in keeping Indian families together, and helping Indian children retain their cultural identity and heritage; and

WHEREAS, in 2016, the Department of Interior promulgated a Final Rule for ICWA to clarify the law and provide uniformity in the application of ICWA;⁴ and

WHEREAS, ICWA and the Final Rule have been the subject of litigation challenging the constitutionality, general rules, and applicability of ICWA;⁵ and

¹ Indian Child Welfare Act of 1978 § 1901, 25 U.S.C. § 1901(4) (2017)

² *Indian Child Welfare Program: Hearings Before the Subcomm. on Indian Affairs of the Comm. on Interior and Insular Affairs of the U.S. S.*, 93th Cong. 15-17, (1974), (statement of William Byler, Exec. Dir., Ass’n on Am. Indian Affairs, Inc.).

³ Casey Family Programs, *Comment Letter on Proposed Indian Child Welfare Act Proceedings* (Mar. 15, 2015), <http://www.nativeamericanbar.org/wp-content/uploads/2014/01/CFP-et-al-Support-Letter-Re-Proposed-ICWA-Regulations.pdf>

⁴ 81 Fed. Reg. 38778-01 (June 14, 2016)

⁵ See *Carter v. Tahsuda*, No. 17-15839, 2018 WL 3720025, at 1-2 (9th Cir. Aug. 6, 2018) (finding plaintiffs challenging ICWA failed to state a claim); *National Council For Adoption v. Jewell*, 156 F.Supp.3d 727 (E.D. Va. 2015) (upholding ICWA under the APA); *Doe v. Hunter*, No. 4:15-cv-00471-JED-FHM (N.D. Okla. Mar. 3, 2017) (dismissing ICWA case); *Renteria v. Cuellar*, No. 2:16-cv-01685-MCE-AC (E.D. Cal. Dec. 12, 2016) (finding ICWA complaint moot); and *S.S. v. Stephanie*, 388 P.3d 569 (Ariz. App. Div. 1. 2017) (upholding ICWA in light of equal protection claims).

WHEREAS, preservation of ICWA is of ongoing and critical importance because Indian children continue to be removed from homes at a rate 2.6 times higher than the rate than non-Indian children⁶ and 56% of Indian children continue to be placed in non-Indian homes.⁷


WHEREAS, litigation as well as associated media campaigns and legislative efforts attacking the validity of ICWA threatens the welfare of Indian children as well as the political and cultural integrity of Indian tribes.

NOW THEREFORE BE IT RESOLVED that NNABA supports the defense of ICWA’s validity through litigation, legislation, and administrative action;

BE IT FINALLY RESOLVED that NNABA supports this resolution as a policy priority until it is withdrawn or modified by subsequent resolution.

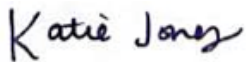
CERTIFICATION

The foregoing Resolution was adopted by the Board of Directors of the National Native American Bar Association, on April 10, 2019, via online voting pursuant to § 4.9 of the Native American Bar Association Bylaws.



Joel W. Williams, President

ATTEST:



Katie Jones, Secretary

⁶ National Council of Juveniles and Family Court Judges, *Disproportionality Rates for Children of Color in Foster Care* 14 (2015), https://www.ncjfcj.org/sites/default/files/NCJFCJ-Disproportionality-TAB-2015_0.pdf

⁷ National Council for Adoption, *Interracial Adoptive Families and Their Children* 109 (2009) <https://www.adoptioncouncil.org/publications/adoption-factbook.html>