

# Indian Child Welfare – The Opposition

- **David Simmons, MSW** - Director of Government Affairs and Advocacy - National Indian Child Welfare Association
- **Donald M. Ragona**, Asst. Director of Development/House Counsel – Native American Rights Fund



**NICWA**

National Indian Child Welfare Association  
Protecting Our Children • Preserving Our Culture



NATIVE AMERICAN RIGHTS FUND

# The Attack on ICWA

- Who are the critics of ICWA
- What are their motivations
- What are their goals and strategies



**NICWA**

National Indian Child Welfare Association  
Protecting Our Children • Preserving Our Culture



NATIVE AMERICAN RIGHTS FUND



# The Critics

- Goldwater Institute
- National Council for Adoption
- American Academy of Adoption Attorneys
- Anti-Sovereignty interests



**NICWA**

National Indian Child Welfare Association  
*Protecting Our Children • Preserving Our Culture*



NATIVE AMERICAN RIGHTS FUND

# Motivations (The Real Ones)

- Money
- Racism
- Ignorance
- Anti - Sovereignty



**NICWA**

National Indian Child Welfare Association  
*Protecting Our Children • Preserving Our Culture*



NATIVE AMERICAN RIGHTS FUND

# Goals and Strategies

- Seek declaratory and injunctive relief against certain provisions of ICWA and the new BIA guidelines (and soon BIA ICWA regulations).
- Change federal and state laws to give “*abused, neglected or abandoned*” Native American children the same protections that are given to all other American children: the right to be placed in a safe home based on their best interests, not based on their ***race.***”
- Remove tribal involvement/influence in matters involving their children and other matters



**NICWA**

National Indian Child Welfare Association  
Protecting Our Children • Preserving Our Culture



NATIVE AMERICAN RIGHTS FUND

# Federal Litigation

- **Arizona - Carter et al. v Washburn**
- **Virginia – National Council for Adoption v. Jewell**



**NICWA**

National Indian Child Welfare Association  
*Protecting Our Children • Preserving Our Culture*



NATIVE AMERICAN RIGHTS FUND

# Carter et al. v Washburn



- In July 2015, the Goldwater Institute filed a federal class action lawsuit challenging the constitutionality of ICWA and the revised Guidelines.
- The proposed class of plaintiffs includes all Native children who are in foster care in Arizona and live off reservation and all foster parents, pre-adoptive, and prospective adoptive parents who are not members of the Native child's extended family.



**NICWA**

National Indian Child Welfare Association  
Protecting Our Children • Preserving Our Culture

# Carter et al. v Washburn (cont.)



- The suit specifically targets ICWA’s transfer, active efforts, burdens of proof for removal, burdens of proof for termination of parental rights, and placement preferences provisions, as well as corresponding sections in the revised Guidelines, and an Arizona law which requires the Arizona Department of Child Safety to “ensure compliance with ICWA.”



**NICWA**

National Indian Child Welfare Association  
Protecting Our Children • Preserving Our Culture



# National Council for Adoption v. Jewell



- In May 2015, the National Council for Adoption sued the BIA in the federal Eastern District of Virginia.
- The lawsuit raised several administrative complaints concerning the publication of the Guidelines; challenges to the BIA's authority to promulgate specific sections of the Guidelines such as:



**NICWA**

National Indian Child Welfare Association  
Protecting Our Children • Preserving Our Culture

# National Council for Adoption v. Jewell, (Cont.)



- the Guidelines' placement preferences provisions;
- the Guidelines' requirement that adoption agencies follow ICWA's placement preferences;
- the Guidelines' requirement that adoption agencies conduct a diligent search to identify placement options that satisfy these requirements.



**NICWA**

National Indian Child Welfare Association  
*Protecting Our Children • Preserving Our Culture*

# National Council for Adoption v. Jewell, (Cont.)



- Additionally, Plaintiffs claimed:
- ICWA itself offends the constitutional rights of Indian children:
- specifically: the right to equal protection of the laws;
- the right to freely disassociate from a child's tribe;
- and the right to form a familial bond with a child's foster parents.



**NICWA**

National Indian Child Welfare Association  
Protecting Our Children • Preserving Our Culture

# How can tribes and allies work together to help defend ICWA?



- Educate state and federal policymakers as well as state officials about the need for the updated Guidelines and new Regulations.
- Contact your State Attorney General and/or Child Welfare Services Agency.
- Work with us on a coordinated legal response.
- Alert the ICWA Defense Project to other cases.
- Work with us on a coordinated media response.
- Fundraise



**NICWA**

National Indian Child Welfare Association  
*Protecting Our Children • Preserving Our Culture*

# The Attack on ICWA

## Resources

- Why A Conservative Legal Organization Is Desperately Trying To Kill The Indian Child Welfare Act
- The Adoption Crunch, the Christian Right, and the Challenge to Indian Sovereignty



**NICWA**

National Indian Child Welfare Association  
*Protecting Our Children • Preserving Our Culture*

Thank you for your interest in this work and your dedication to ICWA and the well being of Native children and families.

If you have any questions or would like additional information on what was discussed today, please contact:

**David Simmons**, MSW - Director of Government Affairs and Advocacy P: 503-222-4044, ext.119 [desimmons@nicwa.org](mailto:desimmons@nicwa.org)

**Matt Newman**, Staff Attorney – Native American Rights Fund P:(907) 276-0680, [mnewman@narf.org](mailto:mnewman@narf.org)



**NICWA**

National Indian Child Welfare Association  
Protecting Our Children • Preserving Our Culture



NATIVE AMERICAN RIGHTS FUND