

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
- Private Adoption Attorneys
- National Council for Adoption
- American Academy of Adoption Attorneys



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
- Fear



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.
- Change federal and state laws to be 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.***”



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

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

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



NICWA

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



NATIVE AMERICAN RIGHTS FUND