



# Indian Child Welfare Act & Minnesota Indian Family Preservation Act

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# Historical Era's



1600's-1870's  
Treaties



1870's-1920's  
Assimilation  
and Allotment



1920's-1940's  
Reorganization



1940's-1960's  
Termination



# Adoption Era 1950's-1970's



## Stemming from “Termination Era”

- Lacked recognition or did not accept the value of traditional/cultural child-rearing practices
- No legal representation for parents or child
- Child Welfare System functioned as a paternal authority over American Indians
- American Indian children were placed in non-native non-relative homes, in most instances were later adopted to these homes.

Through this practice, thousands of Indian children were removed severing familial and tribal ties.



# Passage of the Indian Child Welfare Act 1978

## Congress acknowledged...

- A contractual relationship between U.S. Government and Indian tribes as sovereigns.
- A tribes fundamental interest in protecting their children, and their right to do so.

## Congress found that..

“there is no resource... more vital to the continued existence and integrity of Indian tribes than their children” and that there has been a failure by non-Indian agencies “to recognize the essential tribal relations of Indian people and the culture and social standards prevailing in Indian communities and families.”

25 U.S.C. 1902

# Overview of Major Provisions

1. Inquiry
2. MIFPA Notice  
Notification to tribe within 24 hours or 7 days of services
3. ICWA Notice  
OHP and/or TPR notification of a placement proceeding
4. Active Efforts
5. Qualified Expert Witness (Diligent efforts to follow order)
6. Placement Preferences (Diligent efforts to follow order)



# ICWA Promotes Equity



ICWA embraces equity by protecting the rights of Indian children, their parents and tribes.

*ICWA promotes equity because:*

*Equity speaks to fairness in the areas of opportunities, resources and positions of power and decision-making authority.*

# ICWA Federal Litigation

## Brackeen vs. Haaland

November 9<sup>th</sup> Supreme Ct. heard oral arguments

Two major questions:

- Is the ICWA constitutional based on equal protection?
- Is the ICWA an over reach of Congress' powers based on commandeering?

Resources:

- [This Land Podcast](#)
- [Haaland v. Brackeen, No. 21-376 \[ICWA\] – Turtle Talk](#)
- [Home - Native American Rights Fund \(narf.org\)](http://narf.org)

## Possible Outcomes:

1. ICWA ruled unconstitutional in its entirety.
2. Parts of ICWA are repealed
  - Active efforts
  - Record keeping
  - Placement preferences
  - QEW
3. Commandeering
4. ICWA is upheld.





Pidamaya ye!  
(Thank you in Dakota)