

# Wiley Files *Amicus* Brief Supporting U.S. Supreme Court Challenge to Indian Child Welfare Act

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June 2, 2022

Washington, DC – Wiley, a preeminent DC law firm, submitted an *amicus* brief to the U.S. Supreme Court on behalf of the Christian Alliance for Indian Child Welfare in *Brackeen v. Haaland*, a high-profile case involving the rights of Native American children and their families under the Indian Child Welfare Act of 1978 (ICWA).

The *amicus* brief, filed in support of adoptive families and states challenging a Fifth Circuit ruling, urges the Court to overturn ICWA on grounds that it violates the U.S. Constitution's guarantee of Equal Protection and unconstitutionally exceeds the power delegated to Congress by the Indian Commerce Clause. The brief was joined by 13 individual signatories who are former ICWA children – or relatives of ICWA children – and who have all been harmed by ICWA.

Krystal B. Swendsboe, an associate in Wiley's Issues and Appeals Practice, is Counsel of Record to the Alliance in this Supreme Court case. The Wiley team, representing the nonprofit Alliance on a pro bono basis, also includes partner Stephen J. Obermeier and associate Claire E. Kellen.

The case, which stems from a challenge to ICWA's child-custody requirements, raises a variety of constitutional issues with ICWA. The *amicus* brief, in turn, addresses the harm suffered by Indian children and their families as a result of ICWA, such as the denial of the full range of rights and protections of the federal and state constitutions to ICWA children and families when subjected to tribal jurisdiction under the 44-year-old law. The brief includes, as examples, stories from the individual *amicus* signatories who have been harmed by

## Related Professionals

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Krystal B. Swendsboe  
Partner  
202.719.4197  
kswendsboe@wiley.law  
Stephen J. Obermeier  
Partner  
202.719.7465  
sobermeier@wiley.law

## Practice Areas

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Issues and Appeals

ICWA's race-based distinctions and discriminatory placement preferences.

"As a result of ICWA's race-based classifications, Indian children and families are subjected to unbalanced child-custody proceedings that prioritize keeping children 'in the Indian community,' without consideration of the child's best interest," Wiley said in the *amicus* brief. "By treating Indian children differently for purposes of custody and other family-law matters solely because of their Indian ancestry, ICWA violates Equal Protection."

In addition, ICWA exceeds the authority granted to Congress under the Indian Commerce Clause, according to the brief. "It should go without saying that Indian children are not resources, property, or items of 'commerce,' in any sense," Wiley argued in the brief. "And child-custody matters are even less related to commerce than statutory schemes that this Court has struck down in other contexts."