

The Supreme Court Case to Overturn the Indian Child Welfare Act (1978) Part 2

Link: [\(474\) Supreme Court hears case challenging who can adopt Indigenous children - YouTube](#)
PBS NewsHour [Nov 2022 (8 mins)]

The NewsHour segment covers the case to be heard in November 2022 in the Supreme Court to overturn 1978 ICWA (Indian Child Welfare Act). This clip addresses the positive impact of ICWA reforms as well as the argument against it (that it is discriminatory and therefore unconstitutional). One adoptee describes how devastating it would have been if she were severed from her tribe and relatives. Conversely, a representative of The Goldwater Institute states, "It certainly is true that ICWA had good intentions when it was passed. Unfortunately... it went way too far in the other direction, and the best interests of a particular child should take a backseat to the desires of tribal governments." A spokesperson for the tribes disagrees and points out that the overturning of the law will, "fundamentally change what it means to be a Native American in this country."

Link: [\(474\) The Story of Baby O: Rebecca Nagel on the Supreme Court Case That Could Gut Native Sovereignty - YouTube](#) Democracy Now [Nov. 2022 (15 min)]

In late 2022, the Supreme Court heard oral arguments regarding the constitutionality of the Indian Child Welfare Act (ICWA). ICWA provides tribes a say before placing Indigenous children in foster or adoptive homes. The guest, Rebecca Nagel, Cherokee journalist, recently wrote an article in The Nation about the case, and hosts "This Land" podcasts, the second season of which covers the case. Nagel describes how social workers involved with Baby O (whose adoptive parents are lead plaintiffs) fervently worked to keep the baby from the birth family in support of the white adoptive family. In the end, the white family adopted the baby but moved forward with the suit challenging ICWA based on their belief that the law is discriminatory. Responding to some of the comments made by justices- including Supreme Court Justices- Nagel points out that many justices don't understand how US law and tribal law intersect, and those comments, "show how much ignorance and racism is in a system that we think is supposed to be about interpreting the law and interpreting precedent." Nagel describes ICWA: "[It] is like a set of guardrails so when a native child enters foster care or an adoption, ICWA works to keep that child connected to their family, connected to their tribe and so it gives parents some extra rights, it requires active efforts, there has to be a judge present if a native parent does relinquish rights. It allows tribes to intervene in a case for children who are on tribal lands... It does a lot of different things to keep native children with native families." Nagel describes how tribes have a unique political status that comes out of treaties between tribes that go back throughout American history. If ICWA is declared unconstitutional, there will be a basis to overturn a key part of tribal sovereignty and much of the protections of the political treaties. Nagel names conservative political and corporate organizations leading the charge that stand to benefit financially if ICWA is overturned. Regarding the issue that ICWA discriminates based on race, Nagel names again that tribes are not a racial group, but rather a political group. For example, tribes have land rights, water rights, can run casinos where they would otherwise be illegal. She also explains that the unraveling of ICWA opens the door to changing many of the governmental agreements that have been long fought for including health care, environmental protections, and of course, casinos.



Additional Resources:

[Rebecca Nagle | The Nation](#) “These three cases [of the white lead plaintiffs’ adoptions of Native children] tell a story worthy of national attention, but that story is not that ICWA disadvantages non-Native foster parents. Rather, it’s how, in a biased system, Native families still struggle to keep their children.”

[\(27\) “Most Important Indian Law Case in Half a Century”: Supreme Court Upholds Tribal Sovereignty in OK - YouTube](#) [2020 (13 mins)] Democracy Now

[\(27\) The Heart of ICWA: Becky - YouTube](#)

[\(27\) The Heart of ICWA: Fawn - YouTube](#)

[\(27\) The Heart of ICWA: Lukas - YouTube](#)

[\(27\) The Heart of ICWA: Rhonda - YouTube](#)

[Two lawsuits could threaten the sovereignty of Indigenous nations | Crosscut](#)

[The Doctrine of Discovery, Manifest Destiny, and American Exceptionalism | Challenging Christian Hegemony](#)

[\(27\) How a Court Challenge Could Put Indigenous Kids at Risk \(In The Loop\) - YouTube](#)
[2022 (11 mins)]

<https://www.youtube.com/watch?v=hi7fOOCbI-8> Who should be allowed to adopt Native American children? 13 mins