

Dismissal in Carter v. Washburn staves off challenge to ICWA

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WINDOW ROCK, Ariz. — District Court of Arizona issued an Order in Carter v. Washburn, dismissing a complaint filed by the Goldwater Institute challenging the constitutionality of the Indian Child Welfare Act March 16.

The Goldwater Institute filed a Complaint alleging that specific provisions of ICWA were unconstitutional due to their reliance on the child's enrollment or eligibility for enrollment in an Indian tribe. Among those provisions were the provisions related to Adoptive Placement Preference, Jurisdiction-Transfer, and Higher Evidentiary Standards for Termination of Parental Rights.

While the Complaint originally named the U.S. Department of Interior and Arizona Department of Child Safety, both the Navajo Nation and the Gila River Indian Community intervened based on the fact the Complaint named children from both tribes as plaintiffs.

The Order dismissed the case for failure to state a claim. The Court held that even though Goldwater had multiple opportunities to amend their Complaint, they failed to do so in a way that demonstrated they had standing. The Court held Plaintiffs had not presented facts to demonstrate they had suffered a concrete and particularized injury traceable to the ICWA provisions they were challenging.

"The Indian Child Welfare Act must be protected for the benefit of our children. We will continue to advocate for our foster children to be placed with Navajo families," Vice President Jonathan Nez said. "ICWA was created for the protection of native children and to this end, we will continue to advocate for it in these types of custody cases."

Terrelene Massey, Executive Director of the Division of Social Services said the entity she represents looks forward to continuing to work with the states on how to improve services being provided to children and families in the child welfare systems.

"The Navajo Nation is very pleased with the outcome of this case, and we are proud of the work our Navajo Nation Department of Justice Attorneys did in securing this dismissal," noted Attorney General Ethel Branch. "Children are the most important resource to the Navajo Nation.

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Without our children we have no future.”