



**THE ASSOCIATED STUDENTS OF COLORADO STATE
UNIVERSITY**

**17th SESSION OF THE FIFTY-SECOND SENATE
1 FEBRUARY 2023**

**BILL #5211
ASCSU SIGNATURE ON THE INDIAN CHILD WELFARE ACT (ICWA) LETTER TO
THE U.S. SUPREME COURT**

WRITTEN BY: Mia Ritter, Chair for the Budgetary Affairs Committee, Senator for the Native American Cultural Center; Robert Long, ASCSU President;

SPONSORED BY: Sammy Trout, Chair for the University Affairs Committee, Senator for the College of Liberal Arts; Adrian Salazar, Interim Chair for the Diversity, Equity, and Inclusion Committee, Senator for the Pride Resource Center;

ENDORSED BY: Ashton Barbone, Associate Senator for the Native American Cultural Center; Treasure Morgan, Senator for the Native American Cultural Center; Ariadne Athey, Senator for the Student Disability Center; Ben Torres-Doxey, Associate Senator for the Asian Pacific American Cultural Center; Claudia Paraiso, Senator for the Black/African American Cultural Center; Alex Silverhart, Director of Health and Wellness; Christian Kilburn, Senator for the College of Liberal Arts; Charlie Williamson, Director of Diversity and Inclusion; Elijah Sandoval, ASCSU Vice-President; Kevin Melchior, Adult Learner and Veteran Services; Adalyn Schumer, Adult Learner and Veteran Services; Faraaz Bukhari, Recruitment and Retention Officer, Senator for Health and Human Sciences; Nora Aslan, Chair for the Internal Affairs Committee, Senator for the Pride Resource Center;

Abstract: The purpose of this bill is to add the signature of the Associated Students of Colorado State University onto the letter of support for the continuation of the Indian Child Welfare Act (ICWA) and to continue to deem this law placed only since 1978, constitutional.

WHEREAS

The Colorado State University (CSU) Principles of Community states that every member of the CSU community has a responsibility to uphold the principles of Inclusion, Integrity, Respect, Service, and Social Justice when engaging with one another and acting as a vessel of the universities core beliefs¹; and,

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WHEREAS

The Associated Students of Colorado State University (ASCSU) Preamble reads: “*We the Students of Colorado State University hereby establish a government by the students for the students, based upon the principles of equality and inclusivity for all...*”²; and,

WHEREAS

In the Fall 2022 student census at CSU approximately 0.5 percent of the student body (136 students) identified as Native American³; and,

WHEREAS

The breakdown of Native American students in the College of Agricultural Sciences: Native American: 1.3 percent (21 students); and,

WHEREAS

The breakdown of Native American students in the College of Business: Native American: 0.5 percent (14 students); and, WHEREAS
The breakdown of Native American students in the College of Health and Human Sciences: Native American: 0.4 percent (18 students); and,

WHEREAS

The breakdown of Native American students in Intra-University: Native American: 0.4 percent (8 students); and,

WHEREAS

The breakdown of Native American students in the College of Liberal Arts: Native American: 0.4 percent (17 students); and,

WHEREAS

The breakdown of Native American students in the College of Natural Sciences: Native American: 0.5 percent (30 students); and,

WHEREAS

The breakdown of Native American students in the College of Veterinary Medicine and Biomedical Sciences: Native American: 0.5 percent (9 students); and,

WHEREAS

The breakdown of Native American students in the College of Engineering: Native American: 0.3 percent (8 students); and,

WHEREAS

The breakdown of Native American students in the College of Natural Resources: Native American: 0.6 percent (11 students); and,



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WHEREAS

Additionally, with the Fall 2022 student census, there were 6 Native American students who are also Veterans and 41 Native American students who also identified as First-Generation; and,

WHEREAS

Given the CSU Principles of Community, the ASCSU mission, and the representation of Native American students in every college/group; it is in the natural interests of every ASCSU official, college, group, and SDPS office to listen to the Native American community and recognize their concerns and values; and,

WHEREAS

To correct outdated and derogatory terminology within quotes, the word “Indian” will be replaced by Native, Native American, or Indigenous and have an abstract (*) to signify this change (with the exception of the Bureau of Indian Affairs or BIA and the Indian Child Welfare Act or ICWA); and,

WHEREAS

The Indian Child Welfare Act (ICWA) is a Federal law since 1978 that governs the placement of Native children and ensures that they are placed within their tribal communities and ties that uphold their Indigenous heritage each generation and ensures the long-term stability of Native culture “...protect the best interests of Native* Children and to promote the stability and security of Native* Tribes and families by the establishment of minimum Federal standards for the removal of Native* children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indigenous* culture.” (1978 § 1902)⁵;and,

WHEREAS

ICWA was put in place a result of Native children being placed in white foster homes and boarding schools a much higher rate than average “In South Dakota, 40 percent of all adoptions made by the State’s Department of Public Welfare since 1967-1968 are of Native children, yet Natives make up only 7 percent of the juvenile population.” (H.R. Rep. No. 1386, 9)⁴. “In Wisconsin, the risk run by Native* children being separated from their parents is nearly 1,600 percent greater than it is for non-Native* children.” (H.R. Rep. No. 1386, 9)⁴. “The Bureau of Indian Affairs (BIA), in its school census for 1971, indicates that 34,538 children live in its institutional facilities rather than at home. This represents more than 17 percent of the Native American* school age population of federally recognized reservations and 60 percent of the children enrolled in BIA schools.” (H.R. Rep. No. 1386, 9)⁴; and,

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WHEREAS

As with placements of Indigenous children in boarding schools, this program removed Native children from their Tribal homes without justification and assimilated them into mainstream America; and

WHEREAS

ICWA was also put in place because of Native children being adopted by non-Native communities on a disproportionate level “In 16 States surveyed in 1969, approximately 85 percent of all Native* children in foster care were living in non-Native* homes. In Minnesota today, according to State figures, more than 90 percent of nonrelated adoptions of Native* children are made by non-Native* couples.” (H.R. Rep. No. 1386, 9)⁴; and,

WHEREAS

Much of the basis of the removal of Native children from their communities were based on red herrings that had very vague reasoning and were seldomly relevant “Very few Native* children are removed from their families on the grounds of physical abuse. One study of a North Dakota reservation showed that these grounds were advanced in only 1 percent of the cases. Another study of a tribe in the Northwest showed the same incidence. The remaining 99 percent of the cases were argued on such vague grounds as ‘neglect’ or ‘social deprivation’ and on allegations of the emotional damage the children were subjected to by living with their parents. Indigenous* communities are often shocked to learn that parents they regard as excellent care givers have been judged unfit by non-Native* social workers.”⁴ (H.R. Rep. No. 1386, 10);and,

WHEREAS

The history behind all of this is from the late 1800’s into mid-20th century, Native American children were taken from tribal families and put through an assimilation process in private and public Institutions. Their goal was to “kill the Indian and save the man” and take all children from their “savage parents”; and

WHEREAS

Before this Act was in place in 1978, Native children were forced into boarding schools and foster homes. In these facilities, they were forced to learn white culture: cutting all their hair, abused for speaking in their Native tongue to only speak English, dressing in suits, and practiced Christianity religion; and

WHEREAS

The goal was to take away the culture so there was no more language, and their names were erased from history. There were 40,000 Native children that were killed during this era. Congress finally caught up with what was actively happening in boarding schools and in 1978, they finally passed the Indian Child Welfare Act (ICWA); and

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WHEREAS

If an Indigenous child is set to be adopted, then they are to be passed to another family member or if not then another tribal member or another close tribe so they stay within their Indigenous culture as before ICWA, 83% of Native children were erased and must be saved as much as possible now; and

WHEREAS

As of November 9th, 2022, The US Supreme Court is opening up the act again to determine if it is unconstitutional and if it violates the equal protection clause. Therefore, there is the possibility of overturning this act that's only been in place for only 44 years now; and

WHEREAS

The Brackeen family, a White family, from Texas is challenging this law because they want to take Native children to adopt; and

WHEREAS

The court is treating it as a political subdivision but it's intention is for tribal association and sovereignty. The supreme court is deciding whether the federal government or state laws can protect ICWA. If it is deemed unconstitutional then it weakens the power of tribal nations from now on; and

WHEREAS

ICWA has been described as a vital bedrock for the Native American community by 497 Tribes (all the federally recognized Tribes (two) from Colorado and over 85 percent of all federally recognized Tribes) and 62 Tribal and Native organizations "...all Amici either operate tribal child welfare programs and provide direct child welfare services to their members, or advocate on child welfare issues affecting American Natives* and Alaska Native people, or both. Amici are critically interested in ensuring that ICWA continues to protect the best interests of Native* children, families, and Tribes." (Brief of 497 Tribes et al. 2022)⁶ ;and

WHEREAS

ICWA has been described as a vital bedrock for the Native American community by 26 child welfare, adoption, foster care, and social work organizations "Amici agree with the United States and the Tribal Defendants that ICWA is constitutional and serves vital interests in protecting Native* children specifically, as well as their families and their tribes. Amici write separately to clarify for the Court, based on decades of experience and rigorous research, how ICWA is a context-specific application of child welfare practices that best serve all children, not only children who meet ICWA's definition of 'Native* child.'" (Brief of Casey Family Programs et al. 2022)⁷ ;and,

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WHEREAS

ICWA has been described as a vital bedrock for the Native American community by 31 children’s rights organizations “Amici respectfully submit this brief to correct fundamental misrepresentations made by Plaintiffs and their amici regarding the Indian Child Welfare Act’s (ICWA) protection of the legal rights and best interests of Native children. ICWA was enacted to ‘protect the best interests of Native* children,’ 25 U.S.C. § 1902, and that is exactly what it does.” (Brief of National Association of Counsel for Children et al. 2022)⁸ ;and

WHEREAS

ICWA has been described as a vital bedrock for the Native American community by 87 bipartisan members of Congress, two of them from Colorado “By filing this brief, amici provide the Court with additional context as to how the Indian Child Welfare Act (ICWA) furthers Congress’s aims and responsibilities as the branch of government constitutionally vested with plenary power over Native* affairs.” (Brief for 87 Members of Congress, 2022)⁹ ;and,

WHEREAS

ICWA has been described as a vital bedrock for the Native American community by 23 bipartisan states and the District of Columbia, including Colorado “We submit this brief in support of the federal and tribal parties defending the constitutionality of the Indian Child Welfare Act (ICWA) and its implementing regulations.” (Brief for the States of California, Arizona, Colorado, et al. 2022)¹⁰ ;so,

THEREFORE BE IT HEREBY ENACTED

ASCSU signs the letter created to be sent to the U.S. Supreme Court in support of the Indian Child Welfare Act (ICWA) and protect Indigenous children to keep within their tribal affiliations and protection of tribal sovereignty.

**PASSAGE AND ENACTMENT OF BILL 5211
17th SESSION**

EXPEDITED - UNANIMOUS CONSENT

1 FEBRUARY 2023

SENATE PASSAGE

DATE

ASCSU PRESIDENT ROBERT LONG

DATE



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SOURCES:

1. Ontiveros, Mary. *Principles of Community*, Colorado State University, Fort Collins, Colorado, 2016.
 2. Cheadle, Connor. "The Constitution of the Associated Students of Colorado State University." 2018.
 3. Colorado State University. "Institutional Research, Planning and Effectiveness Interactive Reporting." *Bi Portal*, https://reports.colostate.edu/ibi_apps/portal/IRPub/IRPE_Interactive.
 4. H.R. Rep. (1978). No. 1386, <https://www.narf.org/nill/documents/icwa/federal/lh/hr1386.pdf>.
 5. Indian Child Welfare Act, 25 U.S.C. §§. 1901-63.(1978). <https://www.congress.gov/bill/95th-congress/senate-bill/1214>
 6. Brief of 497 Indian Tribes and 62 Tribal and Indian Organizations as Amici Curiae, p. 1, Haaland v. Brackeen, et al. No. 21-376, No. 21-377, No. 21-378, No. 21-380 (2022).
 7. Brief of Casey Family Programs and 26 other Child Welfare and Adoption Organizaitons as Amicus Curiae, p. 7, Haaland v. Brackeen, et al. No. 21-376, No. 21-377, No. 21-378, No. 21-380 (2022).
 8. Brief for National Association of Counsel for Children and 30 other Children's Rights Organizations as Amici Curiae, p. 1, Haaland v. Brackeen, et al. No. 21-376, No. 21-377, No. 21-378, No. 21-380 (2022).
 9. Brief for 87 Members of Congress as Amici Curiae, p.1, Haaland v. Brackeen, et al. No. 21-376, No. 21-377, No. 21-378, No. 21-380 (2022).
 10. Brief for California, Arizona, Colorado, et al. as Amici Curiae, p. 1, Haaland v. Brackeen, et al. No. 21-376, No. 21-377, No. 21-378, No. 21-380 (2022).
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Dear [insert 9 members of the Supreme Court]:



We, the Student Government Associations of [number universities] colleges and universities in the Colorado State University, [deciding if we want to keep this directly in CO or to expand to NM, AZ, U.S. etc.] wrote this letter to support the Protection of the Indian Child Welfare Act, and the continued protection of Native families, Native land, and tribal sovereignty.

As leaders and representatives of more than [insert amount of collective student bodies], it is our duty to engage and resist the social inequities and injustices of our times. As representatives of the future, we must demand that our future constituents' rights are given the opportunity to codify opinions. We ask you to take our voices and following statements with the highest regard and consideration.

While some may argue that the ICWA is unconstitutional under the 5th and 14th amendments, we argue it is not. Not only is it not racist due to Native identity being a political status as given by the federal government, but also due to the fact that legally the federal government and the laws they create are to be held as supreme law and that those laws to abide by, by states.

Speaking among many students that attend this University, there were many that were impacted by family being taken away from their families at an early age whether it was to be placed with White families or Federal Boarding Schools. As this was tragic for many tribes, it cut ties with our Native language, traditions, and families.

Native identities are being held as a political status, but this has nothing to do with race. As an example, Native Hawaiians' (who use genealogy for affiliation) are not considered a political status, but this is because they are not federally recognized by the Government and Tribal affiliation is based on citizenship to those nations.

The ruling does not apply as the Navajo Nation, which is where the child is from, is federally *recognized and therefore*, the Rice v. Cayetano case does not apply here as the respondents argue. This also means that there can be NO argument for race since this is the case that the Brackeen's are using; as it does not violate equal protection under the 5th amendment.

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Citing to, US v Sandoval - in this case it was ruled that congress, again, has exclusive jurisdiction and has power to extend prohibition over the land of Santa Clara Pueblo and ruled that it did not infringe on the State of New Mexico's equal footing doctrine. This case recognized broad congressional authority and recognition of tribes subject to the guardianship of the federal government is to fall on Congress, not the state court.

Morton v Mancari - this case yet again demonstrates the special treatment granted to Natives and showed that the Indian Reorganization Act of 1934 did in fact go towards the fulfillment of Congress' unique obligation towards the Natives." History has shown, time and time again, that interactions between the Native tribes has been between the federal government and those tribes since the ratification of the constitution. Because ICWA is mandated by the constitution, and therefore does not infringe upon state rights, and because of the long history of plenary power, ICWA is constitutional.

Here are a few students (Native and Non-Native, with their wishes to remain anonymous) that have shared their stories at Colorado State University that have been impacted by adoption laws:

- In the 1960's before ICWA was enacted my grandfather's birth parents died in a car accident on the Reservation, and he was taken from his homeland because the Government didn't want to put him in his own familial ties in the Nation. He was adopted by a German family in Arizona which cared for him well. They wanted him to keep his own ties with our family and would bring him to our Reservation to visit his Aunties, Uncles, and more relatives. He was very lucky to have had those kinds of parents, but he told me about his friends and family that weren't so lucky to end up with a family like that after adoption into a non-Native home. As many children across the United States aren't lucky to end up in that kind of home.
- When Mia (*main Author of this letter*) told me about this letter she was sending, this hit very close to home. I am a Cherokee Native adopted into a white family when I was born. I know I am Native, but I did not grow up in that environment and I feel like this huge identity I carry, I feel like it is completely empty. I asked my adopted Mother time to time to help me investigate my past and learn who my family is but she has always refused. I know it hurts her to want to know but it also hurts me not knowing where I come from. I almost feel fake to this identity, and it will be lost forever because there was nobody to protect who I was as a person.
- As an adopted child, who is not a Native, trust me, there are many of us who do not have a family, and there are many children who are non-Native that need homes. This act is not intended to infringe on the rights of potential adoptive parents for there are children who need to be adopted all the time, it just prioritizes Native children because of their special relationship with the government. It prioritizes them because of the past history and treatment of Indigenous people. It is a matter of equity, rehabilitation and trying to reprimand the notion of the logic of superiority.

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Signed,

Colorado State University Student Government Association



Tyrone Smith

[Nation]

Director of the Native American Cultural Center

[signature]

Mia Ritter

Tohono O'odham/Papago Tribe of Arizona

Student Government Senator for the Native American Cultural Center

Rasa Humeyumtewa

Hopi Tribe of Arizona

Student Success Coordinator for the Native American Cultural Center

The Associated Students of Colorado State University Student Government



Robert Long

Student Body President

[signature]