

Indian Child Welfare Act court hearing scheduled for January

Oral arguments in a closely-watched Indian Child Welfare Act case are set for January 22, 2020. The case is *Brackeen v. Bernhardt*, and will go before a panel of judges in New Orleans, where the first round of arguments took place earlier this year.

The initial hearing resulted in a major victory for the #DefendICWA campaign.

A panel of three judges largely upheld the law, enacted in 1978 to address the high rates of Indian children being taken from their families without consideration of

the impact on their tribal nations.

Over the last 40 years, ICWA has been held up as the “gold standard” in child welfare policy. But some state governments, along with non-Indians who are trying to adopt, or have already adopted, Indian children claim the law violates the U.S. Constitution because it takes race into account.

Some time ago, a federal judge stunned tribes and their advocates by agreeing with the race-based premise. Indian Country quickly came together and appealed

the disastrous decision to the 5th Circuit.

“This is what we need to do when sovereignty is threatened: to come together,” Gil Vigil, a citizen of the Pueblo of Tesuque who serves as president of the National Indian Child Welfare Association, said at the National Congress of American Indians Seventy-Fifth annual convention, where the case was a major topic of discussion. The two organizations are among those leading the ICWA defense.

The stakes are higher now

that ICWA is being presented to a larger group of judges, increasing the chances of a negative ruling for Indian Country. Regardless of the way the en banc panel rules, experts believe an appeal to the U.S. Supreme Court is all but certain.

“No matter who wins at the 5th Circuit, we are certain that the losing side is going to try and bring this case to the Supreme Court,” Dan Lewerenz, a citizen of the Iowa Tribe of Kansas and Nebraska and a staff attorney at NARF, said at NCAI’s meeting in Albuquerque.

NARF is another partner in the #DefendICWA campaign.

The Cherokee Nation, the Morongo Band of Mission Indians, the Oneida Nation and the Quinault Nation have been allowed to intervene in the case, as has the Navajo Nation. Additional copies of the tribal briefs—22 to be exact—were circulated among the judges on the 5th Circuit last month in preparation for the upcoming hearing.

The defendants in *Brackeen* are officials at the Department of the Interior

and the Department of Health and Human Services. The Trump administration has defended ICWA at every step of the case.

The plaintiffs challenging ICWA are the states of Texas, Indiana and Ohio, along with several non-Indians. The lead named plaintiffs are Chad Brackeen and Jennifer Brackeen, who have had two Navajo Nation children—siblings—in their care. They have succeeded in adopting the boy sibling and are attempting to adopt his sister.

Senators announce bill that would increase IHS funding

Tribal health care services would see an increase in funding under a federal bill introduced in December.

Oregon’s U.S. Senators Jeff Merkley and Ron Wyden made the announcement last week.

Specifically, the Indian Health Service received \$6.047 billion, \$243 million more than fiscal year 2019.

IHS provides health care to thousands of Oregon tribal members. Other tribal program aspects of the

pending bill:

The Bureau of Indian Affairs and Bureau of Indian Education would receive \$3.223 billion, an increase of \$142 million to the fiscal year 2019 level.

Some other key provisions in the bill impacting tribes and Oregon:

Forest health restoration:

The bill includes funding increases for several programs that reduce the risk

of catastrophic wildfires on public and private lands.

The U.S. Forest Service and Bureau of Land Management received an additional \$19 million and \$5 million, respectively, for hazardous fuels reduction, bringing the total funding level to \$639 million.

In addition, the bill maintains funding for the Collaborative Forest Landscape Restoration Program at \$40 million.

Wildfire management:

In anticipation of the next fire season, the bill includes \$1.414 billion for fire suppression at the Forest Service and Department of the Interior.

Fiscal year 2020 is also the first year that the bipartisan ‘fire borrowing fix’ comes into effect, resulting in \$2.25 billion of additional funds available for fire suppression and other priorities within the Interior bill.

Columbia River basin restoration program:

The EPA will receive \$1.2 million to continue implementation of the Columbia River Basin Restoration Program. Merkley created this program, and has secured funding since fiscal year 2019 to provide grants to business owners, farmers, ranchers, local governments, and others in the Columbia Basin to clean up and reduce toxics for a cleaner, healthier basin.

Klamath Basin water and wildlife conservation:

In continued efforts toward a long-term solution in the Klamath Basin, the bill includes \$6.5 million—a \$2.5 million increase—to support strategies to restore fish habitat and scale up ongoing efforts to restore healthy populations of shortnose and Lost River sucker fish. The agreement also included \$5 million habitat restoration in advance of the removal of Klamath River dams.

Supreme Court adds another Indian Country jurisdiction case to docket

The U.S. Supreme Court Justices agreed in December to hear *McGirt v. Oklahoma*, an Indian Country criminal jurisdiction case.

The *McGirt* case had not been one of the more prominent Supreme Court Indian cases: Tribes had been paying more attention to *Sharp v. Murphy*, a criminal jurisdiction case that was heard over a year ago.

The justices shocked Indian Country by failing to issue a decision in the *Murphy* at the end of their term this past summer.

The nation’s highest court further kept tribes and their advocates in the dark by failing to schedule a new hearing for *Murphy*.

Even though the October 2019 term began two months ago, the case has so far not appeared on the argument calendar, which currently runs through early March.

McGirt vs. Oklahoma

Jimcy McGirt is currently serving time in the

Oklahoma correctional system for crimes committed in 1997.

McGirt is a 71-year-old inmate at the James Crabtree Correctional Center in Helen, Oklahoma. McGirt and the Supreme Court surprised tribes and legal scholars by granting his petition—which he filed from prison himself—despite repeatedly putting it off since early September.

And while the Seminole Nation citizen has been convicted of heinous crimes—the sexual assault of a child—his case might finally answer the question that’s been on a lot of minds: Is about half of Oklahoma still Indian Country?

Murphy was supposed to have resolved the issue on behalf of Patrick Dwayne Murphy, a citizen of the Muscogee (Creek) Nation who is on death row in Oklahoma. He was convicted in state court of murdering a fellow Creek citizen in 1999.

Two years earlier, McGirt was convicted in state court

of crimes involving a four-year-old Indian girl. But since the incident occurred within the boundaries of the reservation that was promised to the Muscogee (Creek) Nation by treaty, and since the reservation has never been disestablished or diminished by Congress, he argues that the federal government—not Oklahoma—has jurisdiction over the matter.

“Oklahoma courts have a long history of ignoring federal statutes,” McGirt asserted in the petition he wrote to the Supreme Court.

“States have no authority over Indians in Indian country, unless it is expressly conferred by Congress,” he added.

Murphy had already advanced similar arguments to the Supreme Court last year. Since his 1999 crime occurred on an Indian allotment within the Creek Reservation, and since both the victim and the offender are Indians, he believes the state

lacks jurisdiction.

The high stakes have many worried: In addition to the Muscogee (Creek) Nation, the Cherokee Nation, the Chickasaw Nation, the Choctaw Nation and the Seminole Nation signed similar treaties with the U.S. that promised them reservations in eastern Oklahoma—an estimated 19 million acres altogether.

But the justices couldn’t come to a clear conclusion in *Murphy*. It didn’t help that the case was down to just eight of them, following the recusal of Neil Gorsuch, whose knowledge of Indian law and policy is unprecedented in Supreme Court history.

Without his influence and experience—during his time on the 10th Circuit Court of Appeals he ruled favorably when another tribe’s reservation was questioned by a state government—his colleagues appeared to be deadlocked, confused, or worse.

Rick Hill, former head of NIGA, passes suddenly

Rick Hill, former leader of the National Indian Gaming Association, died suddenly December 12 at his home. He was 66.

Mr. Hill was also a former chairman of the Oneida Nation, and film producer. He served as executive producer for *Bright Path*, a motion picture film currently in production.

Under Hill’s leadership, NIGA became a nationally recognized voice in Washington, D.C., and successfully initiated the develop-

ment of a national set of minimum regulatory standards and policies for tribal governmental gaming.

After he retired from Oneida politics, Hill worked on various economic development projects, including negotiating tribal investment in the first ever off-reservation hotel in Washington, D.C. The Residence Inn by Marriot is a 13-story, 233 room, 24,000-square-foot hotel.

“He was a skilled negotiator, politician, leader and jokester. Most importantly, he was a loving brother to us all,” said the Oneida Na-

tion. “The Oneida Nation circle of generational leadership will be greatly impacted by the passing of one of our most respected and prominent leaders.”

Mr. Hill’s latest endeavor involves telling the Jim Thorpe story in a way that honors his legacy.

The film *Bright Path* is co-produced by actress Angelina Jolie and award-winning producer Todd Black with funds from nine different tribes. It is named for Thorpe’s Sac and Fox name, Wa-Tho-Huk, which means ‘Bright Path.’

The film’s production

crew—including executive producer Martin Sensmeier, who also will play the role of Jim Thorpe—spent much of last week at the Forty-Third Annual Lakota Nation Invitational filming basketball games, as well as other sports and academic competitions.

Speaking before hundreds of students, fans and educators last week, Nedra Darling, *Bright Path* executive producer, described Mr. Hill’s passing as a “true loss to Indian Country, and he will be in our hearts forever.”

Addressing addiction, mental health in Indian Country

Before leaving Washington, D.C., for the congressional Christmas recess, a number of senators introduced a bill to help tribal communities across the country access resources support people who are struggling with mental health issues or substance use disorders.

Tribal communities have been hit hard by the opioid epidemic. According to a leading health agency, American Indians and Alaska Natives experience some of the highest drug overdose death rates. However, many tribal communities don’t have the resources they need to tackle this public health crisis.

The bill—*The Native Behavioral Health Access Improvement Act*—would create a behavioral health program to help tribes develop solutions that include culturally-appropriate efforts aimed at prevention, treatment, and recovery.

The bill would set up the Special Behavioral Health Program for Indians—the SBHPI—modeled after the successful Special Diabetes Program for Indians.

“Native communities have been hit hard by the opioid epidemic, yet too many aren’t able to access the behavioral health services necessary to tackle these challenges,” said Sen. Tina Smith of Minnesota, a member of the both the Senate Health and Indian Affairs Committees.

“Tribes need to be able to access the resources necessary to address the opioid crisis, and other mental health and substance use crises. I’m putting this bill forward to help leaders in Indian Country, and those closest to the work, create programs that leverage their unique strengths and cultural resources.”

“Far too many families in Native communities Indian Country have been hurt by the opioid crisis, suicide, and other behavioral health emergencies,” said Sen. Tom Udall of New Mexico, vice chairman of the Senate Committee on Indian Affairs. “Any successful response to behavioral health and substance abuse issues in Indian Country must be driven by tribes. That’s why I’m proud to join Senator Smith on this bill to give Tribes the resources to design treatment and prevention solutions that work for their communities.”

“The federal government has an obligation to empower tribal nations with the resources they need to address mental health and substance use in Indian Country,” said Sen. Elizabeth Warren of Massachusetts. “I’m glad to join my colleagues on a bill to help tribal nations develop and implement behavioral health programs that best suit the needs of their communities.”

“Substance use disorder has touched every corner of this nation, but few communities have been hit as hard as Native Americans and Native Alaskans. This legislation will empower tribes to provide quality, culturally competent care to treat addiction and behavioral health issues and help individuals on the path to recovery,” said Sen. Chatherine Cortez Masto of Nevada.