21-377 CHEROKEE NATION V. BRACKEEN

DECISION BELOW: 994 F.3d 249

LOWER COURT CASE NUMBER: 18-11479

QUESTION PRESENTED:

In 1978, Congress enacted the Indian Child Welfare Act ("ICWA") to remedy the "alarmingly high percentage of Indian families [being] broken up by the removal, often unwarranted, of their children by nontribal public and private agencies." 25 U.S.C. §1901(4). Over the ensuing four decades, state courts have repeatedly sustained ICWA as constitutional, and child-welfare professionals now regard ICWA's procedural and substantive requirements as the gold standard for child welfare. Below, however, the district court struck down much of ICWA. And while the *en banc* Fifth Circuit rejected most of the district court's reasoning, a sharply divided court invalidated several ICWA provisions. The en banc court also affirmed, by an equally divided court, the district court's judgment invalidating several additional provisions. The questions presented are:

1. Did the *en banc* Fifth Circuit err by invalidating six sets of ICWA provisions-25 U.S.C. §§1912(a), (d), (e)-(f), 1915(a)-(b), (e), and 1951(a)-as impermissibly commandeering States (including via its equally divided affirmance)?

2. Did the *en banc* Fifth Circuit err by reaching the merits of the plaintiffs' claims that ICWA's placement preferences violate equal protection?

3. Did the *en banc* Fifth Circuit err by affirming (via an equally divided court) the district court's judgment invalidating two of ICWA's placement preferences, 25 U.S.C. §1915(a)(3), (b)(iii), as failing to satisfy the rational-basis standard of *Morton v. Mancari*, 417 U.S. 535 (1974)?

CONSOLIDATED WITH 21-376, 21-378 AND 21-380 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 2/28/2022