

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-376

DEB HAALAND, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

CHAD EVERET BRACKEEN, ET AL.

No. 21-377

CHEROKEE NATION, ET AL., PETITIONERS

v.

CHAD EVERET BRACKEEN, ET AL.

No. 21-378

STATE OF TEXAS, PETITIONER

v.

DEB HAALAND, SECRETARY OF THE INTERIOR, ET AL.

No. 21-380

CHAD EVERET BRACKEEN, ET AL., PETITIONERS

v.

DEB HAALAND, SECRETARY OF THE INTERIOR, ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION FOR ENLARGEMENT OF THE TIME FOR ORAL ARGUMENT
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.3 and 28.4 of this Court, the Solicitor General, on behalf of the federal parties,¹ respectfully moves that the oral argument in these cases be enlarged to 100 minutes and that the time be allotted as follows: 30 minutes for the federal parties, 20 minutes collectively for the tribal petitioners² and the Navajo Nation³ (collectively tribal defendants), 25 minutes for Texas,⁴ and 25 minutes for the individual petitioners.⁵ Counsel for the tribal defendants, Texas, and the individual petitioners have authorized us to state that they join this motion.

1. These consolidated cases concern the constitutionality of the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. 1901 et seq. In 2018, Texas and the individual petitioners filed the operative complaint against the federal parties, challenging the constitutionality of ICWA on various grounds. J.A. 54-159. The tribal petitioners intervened as defendants. J.A. 26-27. The district court granted summary judgment to Texas and the individual petitioners, declaring various provisions of ICWA and its

¹ The federal parties are the petitioners in No. 21-376.

² The tribal petitioners are the petitioners in No. 21-377.

³ The Navajo Nation is a respondent in each of the four cases.

⁴ Texas is the petitioner in No. 21-378.

⁵ The individual petitioners are the petitioners in No. 21-380.

implementing regulations unconstitutional. 21-378 Pet. App. 468a-529a.

The federal parties and the tribal petitioners appealed, and the court of appeals permitted the Navajo Nation to intervene in support of the appellants. J.A. 6. A divided panel of the court of appeals reversed the district court's grant of summary judgment and rendered judgment in the government's favor on all claims. 21-378 Pet. App. 400a-467a. The court of appeals then granted rehearing en banc and issued a fractured decision affirming in part and reversing in part the judgment of the district court. Id. at 1a-399a.

The parties filed four separate petitions for writs of certiorari seeking review of the en banc court of appeals' decision, and this Court granted all four petitions. The questions before the Court include (1) whether Congress had power under the Indian Commerce Clause or otherwise to enact ICWA; (2) whether various provisions of ICWA violate the anticommandeering doctrine; (3) whether the suit includes any justiciable equal-protection challenge; (4) whether certain classifications drawn by ICWA and its implementing regulations violate equal protection; (5) whether the suit includes any justiciable nondelegation challenge; and (6) whether any provision of ICWA or its implementing regulations violates the nondelegation doctrine.

When it granted the petitions, the Court consolidated the cases and allotted one hour for oral argument. 142 S. Ct. 1204-

1205. The Court's order stated that the "[p]arties that were plaintiffs/appellees in the lower courts shall file opening and reply briefs in conformity with Rules 33.1(g)(v) and 33.1(g)(vii)," and that the "[p]arties that were defendants/appellants in the lower courts shall file briefs in conformity with Rule 33.1(g)(vi)." Id. at 1205.

In light of the multiple questions presented and the complexity of the legal issues involved, the parties moved for leave to file consolidated briefs on the merits in excess of the word limits. Justice Alito granted the motion, "provided that plaintiffs/appellees file two consolidated opening briefs on the merits of no more than 20,000 words each and two consolidated reply briefs on the merits of no more than 8,000 words each, and that defendants/appellants file three consolidated response briefs on the merits of no more than 22,500 words each." Texas and the individual petitioners have filed two consolidated opening briefs on the merits. The federal parties and the tribal defendants have filed two consolidated response briefs on the merits.⁶

2. The parties now move for enlargement of the time for oral argument. As the parties observed in moving for enlargement of the word limits, the questions presented implicate numerous issues of constitutional law, including Article III's case-or-

⁶ Instead of filing separate consolidated response briefs, the tribal petitioners and the Navajo Nation joined the same consolidated response brief on behalf of the tribal defendants.

controversy requirement, Congress's power over Indian affairs, the anticommandeering doctrine, equal protection, and the nondelegation doctrine. Those questions involve several distinct statutory provisions, including the definition of "Indian child" in 25 U.S.C. 1903(4), the provisions governing the removal of Indian children in 25 U.S.C. 1912, the provisions governing the placement of Indian children in 25 U.S.C. 1915, and the recordkeeping provisions of 25 U.S.C. 1915(e) and 1951(a). The opinions of the en banc court of appeals addressing the various constitutional questions and statutory provisions involved span nearly 400 pages. 21-378 Pet. App. 1a-399a.

One hour of oral argument would be inadequate to allow for a thorough airing of the multiple distinct, complex, and important issues presented by these cases. The parties therefore request that the time for oral argument be enlarged to 100 minutes. Because these cases are the only cases scheduled for oral argument on November 9, 2022, enlarging the time for oral argument would not affect the oral argument in any other case.

The Court has previously enlarged the time for oral argument in cases of particular complexity. See, e.g., Collins v. Mnuchin, No. 19-422 (90 minutes); Zubik v. Burwell, No. 14-1418 (90 minutes); NLRB v. Noel Canning, No. 12-1281 (90 minutes); Utility Air Regulatory Group v. EPA, No. 12-1146 (90 minutes); LULAC v. Perry, No. 05-204 (120 minutes); United States v. Booker, No. 04-104 (120 minutes).

3. The parties also move for divided argument, which would be of material assistance to this Court because each set of parties represents distinct interests. Should the Court grant the parties' request to enlarge the time for oral argument to 100 minutes, the parties move that the time be allotted as follows: 30 minutes for the federal parties, 20 minutes for the tribal defendants, 25 minutes for Texas, and 25 minutes for the individual petitioners.

Respectfully submitted.

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AUGUST 2022