**Methodological Appendix**

The analysis for this project draws on two different types of data: materials from court cases and materials from the lead player in the contemporary legal mobilization against ICWA (the Goldwater Institute). This Appendix provides a full list of documents analyzed. It also includes the final coding scheme used to analyze the data.

Court Case Materials Analyzed

The final analysis sample included the following 17 court cases and 52 associated documents. Documents are cited in the manuscript using the codes below:

*Adoptive Couple v. Baby Girl*, 133 S.Ct. 2552 (2013)

(L1) “Brief of Amicus Curiae Adoptive Parents Committee, Inc” (February 26, 2013)

(L2) “Brief of Amicus Curiae Christian Alliance for Indian Child Welfare” (February 26, 2013)

(L3) “Brief of Child Advocacy Organizations as Amici Curiae” (February 26, 2013)

(L4) “Brief of National Council for Adoption as Amici Curiae” (February 26, 2013)

*Americans for Tribal Court Equality v. Piper D.* No. 17-cv-04597 (D. Minn. 2017)

(L5) “Verified Complaint for Declaratory, Injunctive, and Other Relief” (October 10, 2017)

*Brackeen v. Bernhardt*, 937 F.3d 406 (5th Cir. 2019)[[1]](#footnote-1)

(L6) “Brief in Opposition to Defendants' Motion to Dismiss and in Support of Individual Plaintiffs' Motion for Summary Judgment” (April 26, 2018)

(L7) “Brief Amicus Curiae Goldwater Institute, CATO Institute, Texas Public Policy Foundation, and American Academy of Adoption Attorneys” (February 5, 2019)

(L8) “Brief of the Project on Fair Representation as Amicus Curiae” (February 5, 2019)

(L9) “Brief of Amicus Curiae Christian Alliance for Indian Child Welfare” (February 6, 2019)

(L10) “Brief of Individual Plaintiffs-Appellees” (February 6, 2019)

(L11) “State Appellees’ Brief” (February 6, 2019)

(L12) “En Banc Brief of Individual Plaintiffs-Appellees” (January 7, 2020)

(L13) “Unopposed Motion of Goldwater Institute, Cato Institute, and Texas Public Policy Foundation to File Amicus Curiae Brief in Support of Plaintiffs-Appellees on Rehearing En Banc” (January 10, 2020)

*Carter v. Washburn*, No. 15-cv-01259, 2017 WL 1019685 (2017)[[2]](#footnote-2)

(L14) “Challenging the Constitutionality of ICWA: *A.D. v. Washburn*,” produced by The Goldwater Institute (July 7, 2015)

(L15) “Plaintiffs’ Consolidated Response to Federal Defendants’ Motion to Dismiss and State Defendant’s Motion to Abstain and Dismiss” (November 13, 2015)

(L16) “Plaintiffs Response to Amicus Curiae Briefs Filed by (1) Casey Family Programs, et al, and National Congress of American Indians, et al.” (November 25, 2015)

(L17) “Appellants Opening Brief” (September 1, 2017)

(L18) “Appellants Reply Brief” (February 2, 2018)

*Fisher v. Cook*, No. 2:19-CV-02034 (W.D. Ark. Apr. 24, 2019)

(L19) “Complaint” (March 1, 2019)

(L20) “Case Overview: *Fisher v. Cook*,” produced by The Goldwater Institute (March 13, 2019)

(L21) “Backgrounder: Fighting for Equal Protection for Native American Children, *Fisher et al v. Cook et al (Arkansas)*,” produced by The Goldwater Institute (downloaded December 10, 2019)

*In re Alexandria P*., 1 Cal.App.5th 331, 204 Cal. Rptr. 3d 617 (Cal. Ct. App. 2016)

(L22) “Goldwater Letter to Chief Justice Cantil-Sakauye and Associate Justices” (March 24, 2016)

(L23) “Brief of Amicus Curiae Goldwater Institute” (April 22, 2016)

(L24) “Brief of Amicus Curiae of Goldwater Institute and the CATO Institute” (November 7, 2016)

(L25) “In re. Alexandria P.: Equal Protection of Indian Children,” produced by The Goldwater Institute (March 25, 2016)

*In re C.J*., 108 N.E.3d 677, 2018 Ohio 931 (Ohio Ct. App. 2018)

(L26) “Brief of Appellant Guardian Ad Litem” (July 31, 2017)

(L27) “GAL’s Response to Brief of Amici Curiae National Congress of American Indians and National Indian Child Welfare Association” (October 6, 2017)

(L28) “Pursuing Equal Protection for Native American Children: *In re. C.J. Jr.*,” produced by The Goldwater Institute (October 31, 2017)

*In re Interest of A.L.M*., NO. 02-17-00298-CV (Tex. App. Dec. 7, 2017)

(L29) “Brief of Amicus Curiae Goldwater Institute” (October 30, 2017)

(L30) “*In re A.L.M.*,” produced by The Goldwater Institute (October 31, 2017)

*In re Interest of Y.J*., No. 02-19-00235-CV (Tex. App. Dec. 19, 2019)

(L31) “Brief of Goldwater Institute as Amicus Curiae” (March 24, 2020)

(L32) “Providing Equal Protection Rights to Native American Children: In re. Y.J. Case Overview” (downloaded December 2020)

*In re. J.P.C*., CA-SA 2017-0061 (Pima County, AZ 2017)

(L33) “Petition for Review” (October 16, 2017)

(L34) “Fighting for Equal Protection for Native American Children: *In re. J.P.C.*,” produced by The Goldwater Institute (September 14, 2017)

(L35) “*In re JPC.* - Backgrounder,” produced by The Goldwater Institute (downloaded February 19, 2019)

*In re Welfare of A.J.F*., No. A06-303, 2007 WL 92843 (Minn.App. Jan. 16, 2007)

(L36) “Petition for Writ of Prohibition” (November 21, 2017)

(L37) “Seeking Equal Protection for a Native American Boy in Minnesota: *In re A.J.F.*,” produced by The Goldwater Institute (November 21, 2017)

*Nat'l Council for Adoption v. Jewell*, 156 F. Supp. 3d 727 (E.D. Va. 2015)

(L38) “Complaint and Prayer for Declaratory and Injunctive Relief” (May 27, 2015)

*R.B. v. C.W. (In re Adoption of T.A.W.)*, 186 Wash. 2d 828, 383 P.3d 492, 186 Wn. 2d 828 (Wash. 2016)

(L39) “Amicus Brief,” submitted by Goldwater Institute (September 25, 2015)

(L40) “Fighting to Achieve Equal Protection for Indian Children: T.A.W.,” produced by The Goldwater Institute (October 7, 2015)

*Renteria v. Superior Court of Cal*., 138 S. Ct. 986, 200 L. Ed. 2d 250 (2018)

(L41) “Petition for a Writ of Certiorari” (July 17, 2017)

(L42) “Petition for Review” (July 24, 2017)

(L43) “Reply to Answer to Petition for Review” (August 17, 2017)

(L44) “Renteria v. Superior Court: Equal Protection for Indian Children,” produced by The Goldwater Institute (September 14, 2017)

(L45) “Petition for a Writ of Certiorari” (November 2017)

*R.K.B. v. E.T.*, 138 S. Ct. 1326, 200 L. Ed. 2d 513 (2018)

(L46) “Petition for Writ of Certiorari” (December 29, 2017)

(L47) “Brief of the Academy of Adoption and Assisted Reproduction Attorneys as Amici Curiae” (February 2018)

(L48) “Brief Amicus Curiae of the Goldwater Institute” (February 2018)

*S.S. v. Stephanie H*., 388 P.3d 569, 241 Ariz. 419, 756 Ariz. Adv. Rep. 43 (Ariz. Ct. App. 2017)

(L49) “Petition for a Writ of Certiorari” (July 17, 2017)

(L50) “*S.S. v. Colorado River Indian Tribes*: Equal Protection for Indian Children,” produced by The Goldwater Institute (September 8, 2017)

*Watso v. Lourey*, 929 F.3d 1024 (8th Cir. 2019)

(L51) “(Corrected) Appellants Principal Brief” (May 30, 2018)

(L52) “Appellants Reply Brief” (July 25, 2018)

Supplemental Documents Analyzed

The final analysis sample included the following 14 Goldwater Institute documents. Documents are cited using the codes below:

(G1) Coleman, Starlee. 2016. *Goldwater Institute Supports Appeal by Foster Parents in Controversial Indian Child Adoption Case*. Goldwater Institute.

(G2) Dynar, Ali. 2019. *In Defense of Liberty*. Goldwater Institute.

(G3) Flatten, Mark. 2015. *Death on a Reservation*. Phoenix, AZ: Goldwater Institute.

(G4) Goldwater Institute. 2019. *Ensuring Equal Protection for Native American Children: Challenging the Indian Child Welfare Act.* Goldwater Institute.

(G5) Sandefur, Timothy. 2016. “Lexi and Veronica - The Dandelions.” *CATO Unbound*.

(G6) Sandefur, Timothy. 2016. “Racial Discrimination Is No ‘Gold Standard.’” *CATO Unbound*.

(G7) Sandefur, Timothy. 2016. “How to Fix ICWA.” *CATO Unbound*.

(G8) Sandefur, Timothy. 2016. “Treat Children as Individuals, Not as Resources.” *CATO Unbound*.

(G9) Sandefur, Timothy. 2016. “Sovereignty - Tribal or Otherwise - Must Respect Our Rights.” *CATO Unbound*.

(G10) Sandefur, Timothy. 2016. “The Best Interests of Individual Children.” *CATO Unbound*.

(G11) Sandefur, Timothy. 2017. *Escaping the ICWA Penalty Box*. Goldwater Institute.

\*Also published in short form andin the *Children's Legal Rights Journal.*

(G12) Sandefur, Timothy. 2017. “Suffer the Little Children.” *Regulation* Winter:16–20.

(G13) Sandefur, Timothy. 2018. *Family Malpractice*. Goldwater Institute.

(G14) Sandefur, Timothy. 2018. “Recent Developments in Indian Child Welfare Act Litigation: Moving Toward Equal Protection?” *Texas Review of Law & Politics* 23(3):425–65.

Coding Scheme

|  |  |
| --- | --- |
| **Code** | **Description** |
| Document Set |  |
| Court Case | Document is from the dataset of legal cases  |
| Specific Case | Subcode for each of the 18 legal cases |
| Goldwater Document | Document is from the dataset of Goldwater publications |
| Erasure |  |
| No History – Full Document | Document contains no mention of ICWA’s historical antecedents (e.g. genocide, assimilation, forced child removals, etc) |
| Historical Dispossession | Truncated or minimized discussion of ICWA’s historical antecedents (e.g. genocide, assimilation, forced child removals, etc) |
| Settler Normativity |  |
| Settler Savior | Framing of white foster/adoptive families as the best hope for tribal children |
| Settler Injury | Framing of white foster families as victims  |
| Negative Judgements: Native Nations | Negative framing of tribal governments  |
| Negative Judgements: American Indians | Negative framing of American Indians/Native Americans |
| Substandard Protection | Argument that ICWA provides substandard protections for children because it prioritizes tribal preservation |
| Individualism | Argument that ICWA runs counter to individual rights |
| Reclassification | Framing of “Indian” as a racial category rather than a political citizenship status |
| Colorblindness |  |
| General | Argument that any consideration of race constitutes preferential treatment or discrimination; argument that law/policy should not consider race at all  |
| Reverse Racism | Argument that ICWA discriminates against white families (e.g. denying them the right to foster/adopt) |

1. Also known as *Brackeen v. Zinke* (2018), *Brackeen v. Haaland* (2021), and *Haaland v. Brackeen* (2023) [↑](#footnote-ref-1)
2. Also known as *A.D. v Washburn* (2016) [↑](#footnote-ref-2)