

Brief - Equal Protection for Indian Children: Proposals to Reform the Indian Child Welfare Act



Native American children deserve the same protections afforded to all other American children: the right to be placed in a safe home based on their best interests. To protect abused and neglected Native American children, the Goldwater Institute is proposing the following federal and state reforms:

Federal Reforms

1. Repeal the unconstitutional provisions of the Indian Child Welfare Act that create a system of legally sanctioned, race-based segregation.
2. Amend the Indian Child Welfare Act to allow states to apply uniform, individualized, race-neutral standards that protect the best interests and welfare of all children in child welfare and child custody proceedings, regardless of their race.
3. Amend the Indian Child Welfare Act's provisions dealing with jurisdiction so that a child's race does not determine which court – and laws – will decide her fate.
4. Repeal race-based Bureau of Indian Affairs ICWA guidelines and prevent the BIA from issuing race-based rules.
5. Amend the federal Interethnic Placement Act so that adoptions or foster care placements are not delayed or denied based on the race, color, or national origin of the child or the adults involved.

State Reforms

1. Enact a state statute or constitutional amendment protecting the fundamental right of every child to have her best interest pursued through an individualized, race-neutral child custody proceeding. States should protect the best interests of all children, especially those who are abused, neglected or abandoned.
2. Amend states' Interethnic Placement Acts to remove the Indian Child Welfare Act exception so that adoptions or foster care placements are not delayed or denied based on the race, color, or national origin of the child or the adults involved.
3. Repeal state Indian Child Welfare laws that single out children with Indian ancestry for discriminatory treatment based solely on their race, leaving in place protections for all children and adults regardless of race.
4. Enact state laws and amend internal procedures of state agencies involved in child welfare matters so that they conform with the cornerstones of equal protection under the law: of uniformity, race-neutrality, and individualized determination.
5. Apply and, where needed, strengthen race-neutral provisions of the Uniform Child Custody Jurisdiction and Enforcement Act as applied in all child custody proceedings. States should repeal laws that fail to provide for race neutrality when state courts determine whether they can hear a case.