



# WHITE MOUNTAIN APACHE TRIBE

## A Sovereign Tribal Nation

### (Authorizing the Tribe to Join the Native American Rights Fund Amicus Brief in the US Supreme Court Case *Brackeen v. Haaland*)

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- WHEREAS,** The Constitution of the White Mountain Apache Tribe (“Tribe”) of the Fort Apache Indian Reservation provides, at Article IV, Section 1(a) that the Tribal Council (“Council”) shall exercise the power, “To represent the Tribe and act in all matters that concern the welfare of the Tribe”; and
- WHEREAS,** In 2017, individual plaintiffs and the states of Texas, Louisiana and Indiana sued the Secretary of the Interior, the Bureau of Indian Affairs and the US Department of Health and Human Services in Federal District Court in Texas, challenging the constitutionality of the Indian Child Welfare Act (“ICWA”), in a lawsuit, then captioned *Brackeen v. Zinke*; and
- WHEREAS,** That case resulted in a judgement for the plaintiffs and a finding that, among other things, found ICWA’s placement preferences to be in violation of the equal protection clause of the Constitution; and
- WHEREAS,** That decision was appealed to the Fifth Circuit Court of Appeals, traditionally the most conservative Court of Appeals, which substantially upheld it, and then reheard by an *en banc* panel of the same appellate court, which again upheld it; and
- WHEREAS,** During the appeals process, the Tribe joined with the Native American Rights Fund, and a host of other organizations and tribes as a co-signor on their amicus brief in support of the law, as authorized on December 10, 2018 via Resolution No. 12-2018-262 and in support of Supreme Court certiorari via Resolution No. 09-2021-197 on September 28, 2021; and
- WHEREAS,** If the Fifth Circuit’s decision stands, it threatens to invalidate not only the Indian Child Welfare Act, but also the basis upon which all Indian laws, programs, and regulations depend upon, jeopardizing the future of all tribes; and
- WHEREAS,** On February 28, the United States Supreme Court announced that it will hear arguments in the case; and
- WHEREAS,** The Native American Rights Fund and its partners are once again preparing an amicus brief for this matter, and have invited tribes to participate as signatories; and

**Resolution No. 05-2022-119**

**WHEREAS,** Being a signatory on this amicus brief will not join the Tribe to the case as a party, nor commit the Tribe to participate in the litigation; and

**WHEREAS,** The amicus brief has not yet been released to tribes for their review, but because of the tight timetable for the petition, the Office of the Attorney General recommends that the Council authorize the Tribe to sign on the brief, in advance, pending legal review; and

**WHEREAS,** The Council finds that authorizing the Tribe to join as a signatory on the Native American Rights Fund's amicus brief in the Supreme Court case *Brackeen v. Haaland*, subject to legal review of the draft brief, is in the best interests of the Tribe and its members.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Tribe is hereby authorized to join as a signatory on the Native American Rights Fund's amicus brief in *Brackeen v. Haaland*, subject to legal review of the draft brief.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on MAY 17, 2022 duly adopted by a vote of NINE for, ZERO against, and ZERO abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

Kasey Velasquez      5-24-22      Vareysa Johnson      5/24/2022  
Kasey Velasquez, Chairman      Date      Vareysa Johnson, Tribal Secretary      Date