

## **“Baby Veronica” Ruling Failed to Protect Native Children, Sovereignty**

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At the end of last month, the Supreme Court (SCOTUS) ruled that it is possible for a Native American child to be adopted against her parent’s wishes, setting a dangerous precedent for the Indian Child Welfare Act (ICWA). In the time since the ruling, there have been conspicuous silences as well as confusing misinformation in the media coverage of the case.

ICWA was passed in the ‘70s to protect Indigenous nations from losing their children to predatory adoption practices, which in some states (such as Minnesota) was resulting in 90% of Native children put up for adoption being raised in non-Native homes. ICWA gives preference to a Native child’s relatives and tribe during the adoption process. It does not automatically place a child in a Native home, or allow unfit guardians to care for a child ‘just because they are Native.’ What it is supposed to do, and what the Supreme Court has neglected in Veronica’s case, is protect and serve the best interests of Native American children. History has shown us that this protection is necessary: social service agents, BIA officials, and missionaries abducted Native children to further colonization and genocide. The youngest generation of Indigenous nations’ citizens were stolen over the protests of their families and put into settler homes and boarding schools, whose motto was “Kill the Indian, save the man.” Some of those who worked to steal Native children and eradicate their cultures even believed they were looking out for the children’s best interests. Perhaps SCOTUS and the Capobiancos believe *they* are working for Veronica’s best interests, too.

The Capobiancos (who are a white family) never actually adopted Veronica: she was placed in their care pre-adoption over her father’s protest. Her father Dusten Brown, a citizen of the Cherokee nation, never gave his consent for Veronica to be adopted. In fact, Veronica’s mother cut off contact with him four months before Veronica’s birth, and he was not notified that she was being placed for adoption until four months after that. The Capobiancos’ attorneys waited until just a few days before Brown, an Army soldier, was scheduled to be deployed to Iraq before informing him of their intent to adopt Veronica. He immediately tried to get custody of his daughter and contest the adoption. He was in the service for a year before he was able to return to fight for his daughter in court, and before the SCOTUS ruling, it seemed he had won. Two state courts sided with Mr. Brown, and his daughter was placed in his care.

Now, she has once again been placed in the Capobiancos’ care. The Supreme Court ruled that because Mr. Brown did not have custody of her before she was placed with the adoptive couple, he does not have parental preference under ICWA. This is disturbing on a number of levels. Veronica is four years old now, and her childhood has been disturbed by repeated dislocations

and traumatic separations. Mr. Brown has worked long and hard to have his legal right to raise his daughter recognized in court. And the case could have serious ramifications for tribal sovereignty.

The Cherokee Nation has the right to self-determination, which includes the right to determine who can be a citizen. Dusten Brown is a Cherokee citizen, which means that his children are citizens also. Between media coverage and the Capobiancos' lawyers, a good deal of conflicting, racist rhetoric has been generated. On the one hand, Veronica is said to be "only 1% Cherokee" – in other words, 'not Indian enough' to be a REAL Native child. However, the Cherokee Nation does not determine citizenship from blood quantum but from traceable ancestry. Dusten Brown has Cherokee lineage traceable to the Dawes Rolls (government records created in 1893 to officially register members of the Cherokee Nation, among others), which means Veronica is Cherokee also.

On the other hand, the Indian Child Welfare Act itself is said to be a race-based 'entitlement' which prevents Native children from being adopted at all. After Mr. Brown gained custody of his daughter in 2011, many were asking, "How can we expect a Native child to find a good home when adoptive parents know any Indian can jump in and take them away?" Well, ICWA does not allow for that: it only gives first preference to Native relatives. If no suitable relative can be found, the Native child is placed for adoption like any other, preferably through an agency approved by the child's tribe.

The SCOTUS decision was a disappointment and a failure to interpret the ICWA. And on Wednesday July 24th, the South Carolina Supreme Court ordered Veronica's adoption to be finalized. A child has been taken from her father, a citizen from her nation. A precedent has been set to weaken protections designed to preserve the sovereignty of Native American nations.