American Indian and Alaska Native foster children’s health and well-being is best protected when they are placed with family or tribal members, physicians tell the U.S. Supreme Court.

Allowing children from these communities to be placed through state foster care when there are family or tribal members to take them in dissociates children from their culture and perpetuates the harmful effects of decades of state and federal policies that enabled removal of Native children from their families and tribes.

Because evidence shows that children’s mental and physical health are best served when placed with a family or tribal member, the Litigation Center of the American Medical Association and State Medical Societies and the American Academy of Pediatrics (AAP) are urging the U.S. Supreme Court to uphold the Indian Child Welfare Act (ICWA) of 1978.

The law—passed in response to decades of laws that took children away from their families and tribes and promoted forced assimilation—says that a child’s extended family is the first preference for adoption, followed by members of the child’s tribe. In the case before the U.S. Supreme Court, Haaland et al. v. Brackeen et al., seven people, along with Texas, Louisiana and Indiana are challenging the ICWA’s provisions as race-based discrimination infringing on state sovereignty.

“Invalidating ICWA risks returning far too many children to the assimilationist realities of the past. The historical trauma that so many already suffer would be compounded and magnified with fresh loss. Preserving ICWA, however, protects the critical familial and tribal support networks” that American Indian and Alaska Native “children need to thrive,” says the amicus brief filed with the Supreme Court (PDF) by the AAP and AMA Litigation Center.

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.
Kinship placements best

Being placed with extended family—a grandparent, aunt, uncle or adult sibling—helps a child keep familial and community bonds and offers a sense of stability, identity and belonging, the brief tells the court, citing a 2012 Annie E. Casey Foundation report, “Stepping Up for Kids.”

A meta-analysis of studies involving more than 600,000 children found that the practice known as “kinship care” leads to fewer behavioral problems for children, fewer mental health disorders and fewer placement disruptions when compared to children in nonkinship care.

Kinship care is particularly beneficial for American Indian and Alaska Native children, for whom “the almost complete lack of recognition of culture as a determinant of health and the lack of access to culturally competent care results in alienating and disheartening experience,” according to other research cited in the physician organizations’ amicus brief.

Tribal community is family

Family connections in tribal communities extend beyond the notions of a nuclear family.

“The broader tribal community may have a relationship with and responsibility to a child that is similar to a familial relationship and the adoption by a tribal member can provide many of the benefits of near-family kinship care,” the brief says. And when AAP members treat children from tribal communities, they see that “there are major benefits to identification and strong linkage to one’s own community—positive self-concept, internal motivation and optimism and social connectedness, which all contribute to success in adulthood.”

The brief tells the court that “a child-welfare agency should not be able to separate an [American Indian or Alaska Native child] from the child’s family, without considering the child’s tribal connections, and then have the very fact of that originally unlawful separation constitute the sole reason for maintaining the child’s isolation from the tribe.”

At the 2022 AMA Annual Meeting, the House of Delegates adopted policy on the health care needs of American Indian children in foster care to:

- Support federal legislation preventing the removal of American Indian and Alaska Native children from their homes by public and private agencies without cause.


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● Work with local and state medical societies and other relevant stakeholders to support such legislation.
● Support state and federal funding opportunities for American Indian and Alaska Native child welfare systems.