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**GILA RIVER INDIAN COMMUNITY RESPONDS TO ARIZONA
SUPREME COURT DECISION IN *GILA RIVER INDIAN
COMMUNITY v. DEPARTMENT OF CHILD SAFETY***

SACATON, AZ. – In a case argued before the Supreme Court of Arizona in April, the court issued its opinion today in *Gila River Indian Community v. Department of Child Safety*, holding that the Gila River Indian Community could not seek to transfer a child dependency case involving one of its tribal members to the Community's Children's Court under the Indian Child Welfare Act.

The court held that the language of the Indian Child Welfare Act, along with the Bureau of Indian Affairs' recently promulgated ICWA rule, allow for the transfer of state dependency proceedings when foster care placement and termination of parental rights are being decided, but that an Indian tribe may not seek mandatory transfer of a case under ICWA to tribal court after the termination of parental rights.

Prior to the BIA's 2016 ICWA rule, the BIA's guidance for ICWA cases provided that an Indian tribe could seek to transfer a dependency case to tribal court at any time. The Community argued that ICWA's legislative history, including the only report on the bill from the U.S. House of Representatives, supported its position that a tribe could seek transfer at any time.

"Unfortunately, when it published its ICWA rule in 2016, the BIA decided to limit the language of the transfer provision of the ICWA rule contrary to ICWA's legislative intent and purpose," said Community Governor Stephen R. Lewis. While the BIA rule was not in effect when the appeal was filed in the Community's case, the BIA's interpretation was raised at oral argument and in the court's opinion.

While the Community is disappointed with the decision, the holding will not affect many ICWA cases in the future because few dependency cases actually reach the point of termination of parental rights and adoption. And because of the aggressive involvement of anti-Indian organizations like the Goldwater Institute, Indian tribes have become proactive in seeking transfer to tribal courts early in state dependency cases.

In addition, the Arizona Supreme Court vacated the opinion of the Court of Appeals, which would have led to confusion and uncertainty in future ICWA cases. The Supreme Court recognized that Indian tribes have inherent jurisdiction over their children, that tribes may continue to intervene and participate in preadoptive and adoptive placement matters and that tribes may seek discretionary transfer of cases from state to tribal court.

The Community is currently considering its options with regard to the case, although Governor Lewis emphasized that the Community has not sought to delay proceedings involving the child in the case, a strategy employed by anti-ICWA groups and attorneys in

recent cases. "As I have previously stated, the Community's primary concern in any case is the best interest and welfare of our children."

The Community may seek review of the Arizona Supreme Court's opinion through filing a petition for writ of certiorari to the Supreme Court of the United States.

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The Gila River Indian Community is located on 372,000 acres in south-central Arizona and is home to the indigenous people of O'odham (Pima) and Pee Posh (Maricopa). The people are known for their farms, deep traditions, basket weaving and pottery. The Tribe comprises seven districts. The administrative offices and departments are located in Sacaton and serve the people throughout the seven community districts. 100% of its profits from gaming and 17 other Enterprises are utilized by the community providing services and opportunities to achieve the highest quality of life.