

Conservative Activist Groups Representing Petitioners In *Brackeen v. Haaland* Seek To Undermine Tribal Sovereignty And Are Closely Tied To The Fossil Fuel Industry

SUMMARY: The Supreme Court Case *Brackeen v. Haaland* concerns the [validity](#) of the Indian Child Welfare Act (ICWA), which gives preference to Native Americans guardians in cases concerning the custody of Native American children. The petitioners in the case **seek to overturn the ICWA, which legal and [Native experts](#) worry would greatly erode Tribal sovereignty** and lead to a slippery slope eroding Tribal protections in other areas. According to a [Bloomberg Law](#) column, **one casualty of this slippery slope could be Tribal protections on natural resources** because, according to Native American historian Nick Estes “the collective rights of a nation and its sovereignty must be weakened or destroyed to gain access to its lands and resources.” The **extraction industry has pursued [similar cases](#) attacking Tribal sovereignty writ large** in order to open [protected natural-resource lands](#) to [outside investment](#). In short, *Brackeen*’s petitioners succeeding **could be a boon to the fossil fuel industry**.

Organizations that are funded and/or closely tied to the fossil fuel industry have entered the fray in the *Brackeen* case on the side of the petitioners. Wealthy [fossil fuel billionaires](#) and multinational corporations have commonly funded right-wing activists and think tanks to advance their views, notably on environmental issues such as [climate denial](#). The *Brackeen* case continues this tradition. Some of these groups include:

- **Cato Institute:** Cato filed an [amicus brief](#) in support of the petitioners in *Brackeen*. Cato is [closely connected](#) to the fossil fuel billionaire Koch family, whose [primary political goal](#) has been to protect fossil fuels and their consumption at all costs. The organization has also received funding from fossil fuel companies like Exxon while [promoting climate denial](#).
- **Texas Public Policy Foundation:** TPPF filed an [amicus brief](#) in support of the petitioners in *Brackeen*. TPPF is [closely tied](#) to climate-denying, anti-environment [former members](#) of the Trump Administration. The group has received major funding from the Koch Network, an engine for the [fossil fuel industry](#), and helped Rick Perry [draft](#) his [pro-fossil fuel](#) energy policy during his time as the Governor of Texas. Perry also [sits on the](#) board of Energy Transfer Partners and did so during the [Dakota Access Pipeline resistance](#).
- **Goldwater Institute:** Goldwater Institute filed an [amicus brief](#) in support of the petitioners in *Brackeen*. The organization has received [hundreds of thousands](#) from the Koch family and promoted climate change denial.
- **Project On Fair Representation:** POFR filed an [amicus brief](#) in support of the petitioners in *Brackeen*. The organization has received [hundreds of thousands](#) from “[dark-money ATM of the right](#)” Donors Trust, which is closely tied to the Koch family and the [climate denial movement](#).

- **Gibson & Dunn:** Gibson & Dunn is a law firm representing the petitioners in *Brackeen pro bono*. The firm has previously represented [Chevron and Shell](#) and Native American journalist Rebecca Nagel said the firm “[specializes](#)” in the oil industry. Gibson & Dunn also [represented Energy Transfer Partners](#) as they fought Native American resistance to the Dakota Access Pipeline on [sovereign grounds](#).

The Petitioners In *Brackeen v. Haaland* Seek To Undermine Tribal Rights, Which Legal And Native Experts Say May Open Tribal Rights To Fossil Fuel Drilling By Striking Down Tribal Sovereignty

The Petitioners In *Brackeen v. Haaland* Are Challenging The Constitutionality Of The Indian Child Welfare Act (ICWA), Which Is Championed By Native Americans

The Petitioners In *Brackeen v. Haaland* Are Challenging The Constitutionality Of The Indian Child Welfare Act (ICWA), Which Addressed The Forced Removal Of Native American Children From Their Families By Giving Preference To Native Americans In Custody Matters. “The case is *Brackeen v. Haaland*, and what’s surprising is that Gibson Dunn is seeking to overturn a landmark legislation championed by Native Americans. At issue is the constitutionality of the Indian Child Welfare Act and whether it is racially discriminatory. Enacted in 1978, ICWA addressed the forced removal of Native American children from their families and communities that’s been long part of American policy. The law gives preference to members of the Native American nation in custody matters.” [Bloomberg Law, [11/23/21](#)]

- **The Petitioners In *Brackeen v. Haaland* Argue The ICWA Discriminates Against Non-Natives.** “What puts Gibson Dunn right smack in the political/cultural cross hairs is that firm partner Matthew McGill is arguing that ICWA discriminates against non-Native Americans who want to adopt Native children.” [Bloomberg Law, [11/23/21](#)]
- **Native Americans Have Championed The ICWA.** “The case is *Brackeen v. Haaland*, and what’s surprising is that Gibson Dunn is seeking to overturn a landmark legislation championed by Native Americans. At issue is the constitutionality of the Indian Child Welfare Act and whether it is racially discriminatory. Enacted in 1978, ICWA addressed the forced removal of Native American children from their families and communities that’s been long part of American policy. The law gives preference to members of the Native American nation in custody matters.” [Bloomberg Law, [11/23/21](#)]

Legal And Native Experts Have Claimed If The Supreme Court Rules In Favor Of The Petitioners, Tribal Sovereignty And Protections Over Natural Resources Could Be Invalidated

Lower Brule Sioux Tribe Member And Historian Nick Estes Said *Brackeen v. Haaland* Seeks To Dismantle “The Entire Legal Structure Protecting Native Rights.” “In the new season of the This Land podcast premiering this Monday, Cherokee journalist Rebecca Nagle shows how corporate lawyers and rightwing thinktanks like the Cato Institute have teamed up with non-Native families to not only dismantle the ICWA but the entire legal structure protecting Native rights. And so far, they’ve made small but important victories.” [The Guardian, [8/23/21](#)]

Elizabeth Reese, The First Native American Faculty Member At Stanford Law School, Said The ICWA “Is Incredibly Important To Safeguarding Tribal Survival.” “The stakes couldn’t be higher, say legal scholars who specialize in American Indian law. ‘This litigation is incredibly important for the Indian nation,’ says Elizabeth Reese, who’s the first Native American faculty member at Stanford Law School. ‘The Act was passed because the US government was engaged in horrific policies that targeted Indian children—policies designed to destabilize tribal sovereignty.’ Keeping the statute intact, she adds, ‘is incredibly important to safeguarding tribal survival.’” [Bloomberg Law, [11/23/21](#)]

Bloomberg Law: “If The Supreme Court Rules ICWA Unconstitutional [...] It Could Invalidate Native American Protection With Respect To Land And Natural Resources And The Casino Industry, Opening The Floodgates To Businesses In The Energy And Gaming Sectors.” [Bloomberg Law, [11/23/21](#)]

Law Firm Gibson & Dunn, Who Has Represented Fossil Fuel Companies—including Defending Developers Of The The Dakota Access Pipeline As It Attempted To Override Tribal Sovereignty Laws—is Representing The Petitioners In *Brackeen* Pro Bono

Law Firm Gibson & Dunn, Who Is Representing The Petitioners In *Brackeen* Pro Bono, Has Had Chevron And Shell As Clients And “Specializes” In The Oil Industry

Gibson Dunn & Crutcher Is Representing The Petitioners In *Brackeen v. Haaland* Pro Bono. “Gibson Dunn & Crutcher’s latest pro bono newsletter touts work for immigrants, advocates for social justice, Afghan refugees, supporters of reproductive rights, and what it generally calls, ‘some of the most vulnerable members of our communities.’ But what’s not highlighted is a matter that could soon come before the U.S. Supreme Court with major repercussions for the Native American community. The case is *Brackeen v. Haaland*, and what’s surprising is that Gibson Dunn is seeking to overturn a landmark legislation championed by Native Americans.” [Bloomberg Law, [11/23/21](#)]

Gibson Dunn Has Represented Walmart, Amazon, Chevron, and Shell And Is The Former Employer Of Sen. Tom Cotton (R - AK). “So why are corporate law firms like Gibson Dunn – which has represented Walmart, Amazon, Chevron and Shell and is a former employer of the far-right Arkansas senator Tom Cotton – showing up at custody battles to square off with poor Native families and tribes?” [The Guardian, [8/23/21](#)]

Native American Journalist Rebecca Nagle Said “Gibson Dunn Also Specializes In The Other Industry That Comes Up Against Tribes A Lot: Oil.” “Native American journalist

Rebecca Nagle also railed against the firm in a podcast, noting, ‘Gibson Dunn also specializes in the other industry that comes up against tribes a lot: oil.’” [Bloomberg Law, [11/23/21](#)]

Gibson Dunn Represented Energy Transfer Partners As They Attempted To Develop The Dakota Access Pipeline In Violation Of The Standing Rock Tribe’s Treaty Rights Tribal Sovereignty Laws–Which Eventually Defeated The Pipeline

Gibson Dunn Represented Energy Transfer Partners As They Fought Native American Protests And Were Attempting To Build The Dakota Access Pipeline. “American Indian tribes on Wednesday renewed their calls for a federal court to halt the embattled Dakota Access pipeline, which has now been pumping oil for nearly three years. Lawyers for the Standing Rock Sioux Tribe and others appeared by phone in the U.S. District Court for the District of Columbia, squaring off against the Army Corps of Engineers and pipeline developer Energy Transfer Partners LP in the latest round of litigation over the project. [...] Gibson, Dunn & Crutcher LLP attorney David Debold, representing Dakota Access, defended the oil spill risk analysis for the pipeline, noting that sensors can quickly detect changes in pressure and activate shutoff valves if needed.” [Bloomberg Law, [3/18/20](#)]

The Standing Rock Sioux Tribe Launched Opposition To The Dakota Access Pipeline On The Grounds Of Treaty Projections For The Land Land The Pipeline Intended To Pass Through. “The position of the Standing Rock Sioux Tribe is that the Dakota Access Pipeline violates Article II of the Fort Laramie Treaty, which guarantees the “undisturbed use and occupation” of reservation lands surrounding the proposed location of the pipeline. In 2015 the Standing Rock Sioux Tribe, operating as a sovereign nation , passed a resolution regarding the pipeline stating that “the Dakota Access Pipeline poses a serious risk to the very survival of our Tribe and ... would destroy valuable cultural resources.” [The Smithsonian, [Accessed 10/02/22](#)]

The Dakota Access Pipeline Was Shut Down Following Years Of Protest From Native Americans And Environmentalists. “The decision, which could be subject to appeal, is a victory for the Standing Rock Sioux Tribe and other Native American and environmental groups who have fought the project for years, and a significant defeat for President Trump, who has sought to keep the Dakota Access Pipeline alive.” [New York Times, [7/06/20](#)]

The Cato Institute, Which Filed An Amicus Brief In Support Of *Brackeen’s* Petitioners, Has Received Millions From The Fossil Fuel Industry, Promoted Climate Denial, And Supported The Weakening Of Tribal Land Rights

Cato Institute Filed An Amicus Brief In Support Of The Petitioners The Petitioners In *Brackeen v. Haaland*. [Supreme Court Amicus Brief, [10/08/21](#)]

Cato Has Received Millions In Fossil Fuel Funding And Is Closely Connected To The Fossil Fuel Billionaire Koch Family

Cato Institute Was Originally Named The “Charles Koch Foundation.” The group’s founder, David Padden was also a founding director of libertarian think tank, The Cato Institute (originally named the Charles Koch Foundation.) [Chicago Tribune, [10/06/11](#)]

- **The Primary Goals Of The Koch Brothers’ Right Wing Policy Advocacy Were To Protect Fossil Fuel Profits At All Costs And Ensure Consumption Of Fossil Fuels Did Not Decrease.** “Others have chronicled the cap-and-trade fight well, but Leonard penetrates the inner sanctum of the Kochs’ lobbying machine, showing that, from the start, even when other parts of the company could have benefitted from an embrace of alternative energy, Koch Industries regarded any compromise that might reduce fossil-fuel consumption as unacceptable. Protecting its fossil-fuel profits was, and remains, the company’s top political priority. Leonard shows that the Kochs, to achieve this end, worked to hijack the Tea Party movement and, eventually, the Republican Party itself.” [The New Yorker, [8/13/19](#)]

A Cato Institute Scientist Working On Climate Denial Work Said 40% Of His Funding Came From The Fossil Fuel Industry. “In a telling exchange with CNN’s Fareed Zakaria yesterday, long-time polluter apologist Pat Michaels admitted that “40 percent” of his funding comes from the oil industry. Michaels, introduced as “a scientist who now works for the Cato Institute, the libertarian think tank that strongly opposes caps to carbon dioxide,” has promoted global warming denial for decades, funded by a network of oil and coal companies and their ideological allies.” [ThinkProgress, [8/16/10](#)]

2012: The Cato Institute Said That “Fossil Fuels Not Only Saved Humanity From Nature’s Whims But Nature From Humanity’s Demands.” [Policy Analysis, [12/20/12](#)]

The Cato Institute Ran A Climate Denial Operation For Years While Receiving Millions Of Dollars From The Kochs, The Mercers, And Fossil Fuel Companies Including Exxon Mobil. “The Cato Institute in Washington, D.C., quietly shut down a program that for years sought to raise uncertainty about climate science, leaving the libertarian think tank co-founded by Charles Koch without an office dedicated to global warming. [...] The Cato Institute has received millions of dollars from the Koch network, the Mercer Family Foundation, Exxon Mobil Corp. and other foundations that oppose regulations.” [Science.org, [5/29/19](#)]

Texas Public Policy Foundation, Which Filed An Amicus Brief In Support Of *Brackeen’s* Petitioners, Is Funded By And Closely Tied To The Fossil Fuel Industry, Including The Company Behind The Dakota Access Pipeline

Texas Public Policy Foundation (TPPF) Filed An Amicus Brief In Support Of The Petitioners The Petitioners In *Brackeen v. Haaland*. [Supreme Court Amicus Brief, [10/08/21](#)]

TPPF Is Strongly Connected To And Funded By The Fossil Fuel Industries And Played A Key Role In The Trump Administration’s Energy Policy

TPPF Is A “Conservative Think Tank Based In Austin.” “We’re ‘taking all those ideas that we built out over the last four years and leaning into them,’ said Rollins, who prior to joining the White House oversaw the Texas Public Policy Foundation, a conservative think tank based in Austin.” [Politico, [03/03/21](#)]

As Of January 2019, TPPF Had “At Least Eight Alumni Land In The Trump White House, Federal Energy Regulatory Commission And Department Of The Interior,” Who Rejected Climate Science, Promoted The Fossil Fuel Industry, And Undermined Renewable Energy Subsidies. “A conservative think tank located in the heart of oil country has a big influence on President Trump's environmental policy. The Texas Public Policy Foundation has seen at least eight alumni land in the White House, Federal Energy Regulatory Commission and Department of the Interior. The officials overwhelmingly reject climate science, promote more fossil fuel consumption and have run campaigns downplaying the value of renewable energy subsidies.” [E&E News, [01/07/19](#)]

TPPF Was Among The Charles Koch’s Foundation’s Biggest Grantees In 2017, Among Other Funding From Climate Deniers And Opponents Of Environmental Rules And Regulations. “The foundation receives funding from groups that question climate science or push for weaker environmental rules. The Charles Koch Foundation donated almost \$2 million to the group in 2017, according to recent tax filings. That was one of the Koch foundation's biggest contributions. It also marked a sharp increase over Koch's 2016 contribution of \$612,250. In 2015, the foundation gave the Texas group \$175,375.” [E&E News, [01/07/19](#)]

TPPF Does Not Have To Disclose Its Donors—But A 2010 Document Showed That Its Biggest Funders Were The Koch Network, Exxon Mobil, Chevron, And ConocoPhillips. “It also has the endorsement of the oil and gas industry. While TPPF does not disclose its funders, a 2010 funding list accidentally posted to GuideStar USA Inc. and first revealed by the *Texas Observer* provides a glimpse. The filings show the largest sums came from the Koch network, but other energy companies, including Exxon Mobil Corp., Chevron Corp. and ConocoPhillips, also contributed.” [E&E News, [01/07/19](#)]

- **The Primary Goals Of The Koch Brothers’ Right Wing Policy Advocacy Were To Protect Fossil Fuel Profits At All Costs And Ensure Consumption Of Fossil Fuels Did Not Decrease.** “Others have chronicled the cap-and-trade fight well, but Leonard penetrates the inner sanctum of the Kochs’ lobbying machine, showing that, from the start, even when other parts of the company could have benefitted from an embrace of alternative energy, Koch Industries regarded any compromise that might reduce fossil-fuel consumption as unacceptable. Protecting its fossil-fuel profits was, and remains, the company’s top political priority. Leonard shows that the Kochs, to achieve this end, worked to hijack the Tea Party movement and, eventually, the Republican Party itself.” [The New Yorker, [8/13/19](#)]

TPPF Had A “Long Relationship” With Fossil Fuel-Friendly Texas Governor And Trump Energy Secretary Rick Perry, Who Now Sits On The Board Of Energy Transfer Partners And Did So While The Company Was Attempting To Build The Dakota Access Pipeline

TPPF Has A “Long Relationship” With Trump Energy Secretary Rick Perry And “Helped Write Policy Proposals For Him” While He Was Governor Of Texas. “The group has a long

relationship with Energy Secretary Rick Perry, dating back to his time as Texas governor, when it helped write policy proposals for him.” [E&E News, [01/07/19](#)]

Perry Currently Sits On The Board Of Energy Transfer Partners. [Energy Transfer Partners, [Accessed 10/03/22](#)]

- **Sen. Warren Has Called For Perry To Step Down From The Board, Calling His Decision To Join The Board “Unethical”.** “Democratic presidential candidate Elizabeth Warren is calling on former U.S. Energy Secretary Rick Perry to step down from the board of the general partner that controls Dallas-based pipeline giant Energy Transfer LP. In a letter dated Jan. 16, Warren said Perry’s decision to join the board is ‘unethical’ because Energy Transfer lobbied the Department of Energy he oversaw. The company is led by billionaire Kelcy Warren, who isn’t related to Elizabeth Warren.” [*The Dallas Morning News*, [01/18/20](#)]

Perry Was On The Board Of Energy Transfer Partners While the Company Was Attempting To Build The Dakota Access Pipeline “He is also on the board of directors for Energy Transfer Partners, the company building the Dakota Access Pipeline in North Dakota, which has been stalled by protests by the Standing Rock Sioux tribe and supporters.” [The Guardian, [12/14/16](#)]

Goldwater Institute, Which Filed An Amicus Brief In Support Of Brackeen’s Petitioners, Has Received Notable Funding From The Fossil Fuel Billionaire Koch Family

Goldwater Institute Filed An Amicus Brief In Support Of The Petitioners The Petitioners In *Brackeen v. Haaland*. [Supreme Court Amicus Brief, [10/08/21](#)]

The Goldwater Institute Has Received Notable Funding From The Fossil Fuel Billionaire Koch Family

According To Greenpeace, Goldwater Institute Has Received At Least \$205,000 From Koch-Linked Foundations Since 1997 And Has A History Of Promoting Climate Change. [Greenpeace, [Accessed 10/03/22](#)]

- **The Primary Goals Of The Koch Brothers’ Right Wing Policy Advocacy Were To Protect Fossil Fuel Profits At All Costs And Ensure Consumption Of Fossil Fuels Did Not Decrease.** “Others have chronicled the cap-and-trade fight well, but Leonard penetrates the inner sanctum of the Kochs’ lobbying machine, showing that, from the start, even when other parts of the company could have benefitted from an embrace of alternative energy, Koch Industries regarded any compromise that might reduce fossil-fuel consumption as unacceptable. Protecting its fossil-fuel profits was, and remains, the company’s top political priority. Leonard shows that the Kochs, to achieve this end, worked to hijack the Tea Party movement and, eventually, the Republican Party itself.” [The New Yorker, [8/13/19](#)]

Project On Fair Representation, Which Filed An Amicus Brief In Support Of *Brackeen's* Petitioners, Has Received Hundreds Of Thousands From The Koch And Climate Denial Connected Dark Money Group Donors Trust

Project On Fair Representation Filed An Amicus Brief In Support Of The Petitioners The Petitioners In *Brackeen v. Haaland*. [Supreme Court Amicus Brief, [10/05/21](#)]

Project On Fair Representation Has Received Hundreds Of Thousands From Koch Connected Dark Money Group Donors Trust, Which Funds Supporters Of Climate Denial

According To SourceWatch, Project On Fair Representation Has Received At Least \$375,000 From DonorsTrust Since 2015. [SourceWatch, Accessed [10/03/22](#)]

Donors Trust And Its Affiliate, Donors Capital Fund, Are Large Right-Wing Dark Money Operations With Major Ties To The Koch Brothers. “Donors Trust allows wealthy contributors who want to donate millions to the most important causes on the right to do so anonymously, essentially scrubbing the identity of those underwriting conservative and libertarian organizations. [...] Donors Trust is not the source of the money it hands out. Some 200 right-of-center funders who’ve given at least \$10,000 fill the group’s coffers. Charities bankrolled by Charles and David Koch, the DeVoses, and the Bradleys, among other conservative benefactors, have given to Donors Trust.” [Mother Jones, [2/05/13](#)]

- **Mother Jones HEADLINE: "Exposed: The Dark-Money ATM of the Conservative Movement"** [Mother Jones, [2/5/13](#)]
- **The Primary Goal Of The Koch Brothers' Right Wing Machines Was To Protect Fossil Fuel Profits At All Costs And To Ensure Consumption Of Fossil Fuels Did Not Decrease.** “Others have chronicled the cap-and-trade fight well, but Leonard penetrates the inner sanctum of the Kochs’ lobbying machine, showing that, from the start, even when other parts of the company could have benefitted from an embrace of alternative energy, Koch Industries regarded any compromise that might reduce fossil-fuel consumption as unacceptable. Protecting its fossil-fuel profits was, and remains, the company’s top political priority. Leonard shows that the Kochs, to achieve this end, worked to hijack the Tea Party movement and, eventually, the Republican Party itself.” [The New Yorker, [8/13/19](#)]

Donors Trust Provided Notable Support To Climate Denying Think Tanks Such As The Competitive Enterprise Institute And The Heartland Institute. “However, the groups and projects given grants from DCF and DT are among the most active in questioning the link between fossil fuel emissions and climate change and blocking attempts to legislate against greenhouse gas emissions. These groups include the Competitive Enterprise Institute, the Heartland Institute, Committee for a Constructive Tomorrow and the Americans for Prosperity Foundation.” [DeSmog, [Accessed 10/03/22](#)]

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