No. 17-789

In the

Supreme Court of the United States

EFRIM RENTERIA, et al.,
Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
TULARE COUNTY, et al.,
Respondents.

On Petition for Writ of Certiorari to the California Court of Appeal for the Fifth Appellate District

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

The questions presented are:

1. Does ICWA apply as a statutory matter to a case that is not a "child custody proceeding," does not involve removal of an Indian child from a parent, or placement in a foster or adoptive home, or any public or private agency—and, if so,

2. Is it constitutional to apply ICWA's separate, less-protective rules to this case based solely on the race or national origin of the children or the adults?

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

Founded in 1973, Pacific Legal Foundation is a nonprofit, tax-exempt corporation organized under the laws of the State of California for the purpose of engaging in litigation in matters affecting the public interest. PLF provides a voice in the courts for mainstream Americans who believe in limited government, private property rights, individual freedom, and free enterprise. PLF has extensive litigation experience in the areas of racial discrimination, racial preferences, and civil rights. It has participated as amicus curiae in nearly every major United States Supreme Court case involving racial classifications in the past three decades, from *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978), to *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198 (2016).

PLF considers this case to be of special significance in that it concerns the fundamental issue of whether public institutions may resort to racial discrimination to deny fundamental protections of state law to Indian children solely on the basis of their race. Amicus

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[1] Pursuant to this Court's Rule 37.2(a), all parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the Amicus Curiae's intention to file this brief. Letters evidencing such consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

respectfully requests that this Court grant the petition of Efrim and Talisha Renteria for writ of certiorari, and reverse the decision of the Superior Court of California for Tulare County.

SUMMARY OF THE ARGUMENT

Application of the Indian Child Welfare Act (ICWA) to private, intrafamily disputes deprives American citizens of the equal protection of state law based solely on their race and reaches beyond the scope of the Indian Commerce Clause. Unlike proceedings involving children of any other race, ICWA elevates tribal interests above the best interests of Native American children. These children are vulnerable members of a class that has repeatedly suffered—and continues to suffer—ill effects from well-intentioned public and private efforts.[2]

Congress has claimed plenary authority over all Native American affairs through an untenable interpretation of the Indian Commerce Clause. They have used this purported power to justify a significant intrusion into traditional state matters. The original scope of the Indian Commerce Clause does not support this disruption of sound Federalism principles, and there is no other constitutional authority to support Congress' actions.

ICWA also impermissibly classifies American citizens based on their race. Federally recognized tribal membership is almost universally dictated by

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[2] *See generally* Naomi Schaefer Riley, *The New Trail of Tears: How Washington Is Destroying American Indians* (2016) (describing the disastrous effects of numerous paternalistic policies on Native Americans, such as the "trust" relationship that bars private ownership of land and ICWA).

descendancy. ICWA applies to children who are members of a federally recognized tribe, or to those children who are eligible for membership in a federally recognized tribe and have a parent that is a member of a federally recognized tribe. In this way, ICWA almost always operates as a suspect classification based on race. ICWA is not triggered by social, political, or cultural ties to an Indian tribe, but by blood lineage, raising equal protection concerns that require review under strict scrutiny.

This case raises issues of national importance. Because Congress lacks the authority to regulate private family disputes in state courts, and because ICWA impermissibly denies American citizens the equal protection of state law based solely on race, this Court should grant certiorari and review the constitutionality of ICWA.

ARGUMENT

I
CONGRESS' INTRUSION INTO PRIVATE GUARDIANSHIP DISPUTES RAISES SERIOUS FEDERALISM CONCERNS

The constitutional structure preserves "broad autonomy" for the states in structuring their governments and pursuing legislative objectives. *Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612, 2623 (2013). Federalism preserves the "integrity, dignity, and residual sovereignty" of the states through the allocation and balance of power between the states and the federal government. *Bond v. United States*, 564 U.S. 211, 221 (2011). Federalism also secures the right of the individual to be free from laws enacted "in

excess of delegated governmental power." *Id.* at 221-22.

The Constitution reserves all powers not specifically granted to the Federal Government to the states or citizens. U.S. Const. amend. X. Congress' asserted authority for ICWA—the Indian Commerce Clause—is insufficient to support the regulation of private family proceedings in state court. *See Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552, 2565-71 (2013) (Thomas, J., concurring). Since neither the Indian Commerce Clause nor any other constitutionally enumerated power gives Congress the power to regulate the terms of private proceedings involving intrafamily guardianship disputes, this Court should grant certiorari in order to review the constitutionality of ICWA.

A. This Court Must Clarify the Proper Scope of the Indian Commerce Clause

The congressional findings for the Indian Child Welfare Act claim that "Congress has plenary power over Indian affairs" derived from clause 3, section 8, article I of the U.S. Constitution (the Indian Commerce Clause) and "other constitutional authority." 25 U.S.C. § 1901. The Indian Commerce Clause, however, merely states that "[t]he Congress shall have Power . . . [t]o regulate *Commerce* . . . with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3 (emphasis added). This Court has repeatedly upheld similar assertions of power beyond commerce, stating that Congress has "'plenary and exclusive' powers to legislate in respect to Indian tribes" by virtue of the Indian Commerce Clause and the Treaty Clause. *United States v. Lara*, 541 U.S. 193, 194 (2004) (citing to *Washington v. Confederated Bands and Tribes of*

the Yakima Indian Nation, 439 U.S. 463, 470-71 (1979)). But it is exceptionally unlikely that such broad powers lurk in a clause that the "[Founders] understood to give Congress the limited authority to regulate trade with Indian tribes living beyond state borders." *Upstate Citizens for Equal., Inc. v. United States*, No. 16-1320, 2017 WL 5660979, at *3 (U.S. Nov. 27, 2017) (Thomas, J., dissenting from denial of certiorari) (internal quotes and citation omitted).

Founding-era sources show that the Indian Commerce Clause was properly limited to the regulation of "trade with Indians, though not members of a state, yet residing within its legislative jurisdiction." *The Federalist* No. 42, at 284-85 (James Madison) (Jacob E. Cooke ed., 1961); *see generally* Robert G. Natelson, *The Original Understanding of the Indian Commerce Clause*, 85 Denv. U. L. Rev. 201 (2007). No other constitutional grant of authority supports a plenary power over all Indian affairs. *See Adoptive Couple*, 133 S. Ct. at 2566 (Thomas, J., concurring) (citing Mathew L.M. Fletcher, *The Supreme Court and Federal Indian Policy*, 85 Neb. L. Rev. 121, 137 (2006)) ("As a matter of federal constitutional law, the Indian Commerce Clause grants Congress the only explicit constitutional authority to deal with Indian tribes"); Natelson, *supra*, at 210 (evaluating, and rejecting, other potential sources of authority supporting congressional power over Indians).

During the Constitutional Convention, James Madison proposed a more sweeping power "[t]o regulate affairs with the Indians as well within as without the limits of the United States." *See* 2 *Records of the Federal Convention of 1787*, at 315-16 (M.

Farrand rev. ed., 1937) (Aug. 18, 1787) (motion of James Madison, Virginia). In response, the Committee of Detail proposed that the power "[t]o regulate commerce with foreign nations, and among the several states;" be amended to include "and with Indians, within the Limits of any state, not subject to the laws thereof." *Report of the Committee of Detail* (Aug. 22, 1787), *reprinted in* 2 *Records*, at 366-67.

With these amendments, the grant of power to Congress over Indian affairs became limited in direction and scope. The object of the power was changed from individual "Indians" to "Indian Tribes." *See* Mark Savage, *Native Americans and the Constitution: The Original Understanding*, 16 Am. Indian Law Rev. 57, 72-73 (1991). Though the power could reach tribes within the limits of states but not subject to state jurisdiction, it could not reach individual Indians. *See id.* Early decisions of this Court extended the power of Congress to individual Indians, but only where "commerce, or traffic, or intercourse" was carried on by an individual member of a tribe. *See United States v. Holliday*, 70 U.S. 407, 418 (1865).

Viewed together with the additional grants of power contained within the Commerce Clause, it is evident that the Indian Commerce Clause is not a grant of plenary power over all Indian affairs. Article I, section 8, clause 3, gives Congress related grants of power over three separate relationships: "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3. The Clause has not been—and could not be—construed to grant Congress plenary power over foreign nations or the states; and there is

no reason to infer the Committee on Detail would have used the same Clause to extend such sweeping power over Indian tribes alone. *See* Natelson, *supra*, at 215. Varying the meaning of "Commerce" for the three objects of the Clause violates the contemporaneous legal rule of construction that "the same word normally ha[s] the same meaning when applied to different phrases in an instrument." *Id.*

Though the idea that Congress had exceptionally broad authority to regulate with respect to Indian tribes has been accepted in this Court for over 100 years, attributing such authority to the Indian Commerce Clause is, at best, a post-hoc rationale. In *United States v. Kagama*, the Court admitted that "it would be a very strained construction" of the Indian Commerce Clause to find that laws passed "without any reference to their relation to any kind of commerce" could be "authorized by the grant of power to regulate commerce with the Indian tribes." 118 U.S. 375, 378-79 (1886). Under a proper understanding of the Indian Commerce Clause, Congress' appropriate reach must be limited to some type of commerce with the Indian tribes.

B. Private, State-Court Proceedings Are Not Commerce

The states "diverge greatly" in their interpretations of whether ICWA even extends to private proceedings involving intrafamily disputes. *See, e.g.*, Billy Joe Jones, et al., *The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children* 28 (American Bar Association 2d ed., 2008). This Court should grant certiorari to clarify to the state courts that Congress' authority under the Indian Commerce

Clause cannot reach into the traditional state-law domain of private, intra-family disputes.

The application of ICWA here does not "regulate Indian tribes as tribes." *See Adoptive Couple*, 133 S. Ct. at 2570 (Thomas, J., concurring). A private dispute over guardianship does not implicate commerce with an Indian tribe, nor does it regulate commerce between individuals. If Congress may reach private, intrafamily disputes merely because one family member is Native American, the Indian Commerce Clause is left without any limits.

Even the broad, though similarly suspect,[3] interpretation of the Interstate Commerce Clause has limits. *See United States v. Lopez*, 514 U.S. 549 (1995) (holding unconstitutional the Gun-Free School Zones Act of 1990 as regulating conduct beyond the scope of "Commerce . . . among the several States"); and *United States v. Morrison*, 529 U.S. 598 (2000) (holding unconstitutional the Violence Against Women Act on similar grounds). Under the Commerce Clause, Congress may only regulate: (1) the use of the channels of commerce; (2) the instrumentalities of commerce or persons in interstate commerce; and (3) activities that have a substantial effect on commerce. *Lopez*, 514 U.S. at 558-59. Where Congress has regulated parental rights under the Commerce Clause, it has relied on express connections to interstate commerce. *See, e.g.*, *United States v. Cummings*, 281 F.3d 1046, 1049 (9th Cir. 2002), *cert.*

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[3] Prominent scholars have argued that Article I, section 8, clause 3, should be more properly limited to trade or transportation between the states. *See, e.g.*, Randy E. Barnett, *The Original Meaning of the Commerce Clause*, 68 U. Chi. L. Rev. 101 (2001).

denied, 537 U.S. 895 (upholding the International Parental Kidnapping Crime Act because all persons prosecuted would have necessarily first engaged in "[t]he transportation of passengers in interstate commerce"). No such connection to commerce exists here.

C. ICWA Commandeers State Court Regulatory Mechanisms Through Federal Regulation in Violation of the Tenth Amendment

The federal government may not commandeer state judicial officers into the enforcement of a federal program. *Printz v. United States*, 521 U.S. 898, 928 (1997). As this Court has recognized, the Tenth Amendment does serve as a limit on the power of Congress. *New York v. United States*, 505 U.S. 144, 166 (1992) (citing *FERC v. Mississippi*, 456 U.S. 742, 762-66 (1982)). The Constitution does not "confer upon Congress the ability to require the states to govern according to Congress' instructions." *Id.* at 162.

In practice, ICWA requires state officers to act as investigative and adjudicatory arms of the federal government. ICWA requires state courts and state agencies to apply, enforce, and implement different standards in state court proceedings involving domestic relations, an area of law that is "virtually [the] exclusive province of the States" under the Tenth Amendment. *Sosna v. Iowa*, 419 U.S. 393, 404 (1975).

This Tenth Amendment bar on Congress' action is not foreclosed by this Court's holding that the states "have been divested of virtually all authority over Indian commerce and Indian tribes." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 62 (1996). In cases

such as this, ICWA does not "regulate Indian tribes as tribes." *See Adoptive Couple*, 133 S. Ct. at 2570 (Thomas, J., concurring). It does not regulate commerce with an Indian tribe, nor does it regulate commerce between individuals Native Americans.

States are not coerced through the spending power to enact ICWA, nor are they given the choice between voluntary enactment or pre-emption. *New York*, 505 U.S. at 167. ICWA instead directly compels states to "enforce a federal regulatory program." *New York v. United States*, 505 U.S. 144, 170 (1992) (citing *Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 288 (1981)).

Because neither the Indian Commerce Clause nor any other enumerated power can be interpreted as a plenary grant of authority over all Indian affairs, and because private, state-court custodial proceedings are not "Commerce . . . with [an] Indian Tribe[]," this Court should grant certiorari and review the constitutionality of ICWA.

II
THIS COURT SHOULD GRANT THE PETITION TO RESOLVE THE CONFLICT BETWEEN ICWA AND THE EQUAL PROTECTION GUARANTEE OF THE FIFTH AMENDMENT

Regardless of Congress' authority to regulate with respect to Indian tribes, that power "is not absolute." *United States v. Alcea Band of Tillamooks*, 329 U.S. 40, 54 (1946) (plurality opinion). All legislation passed by Congress—even legislation enacted under the Indian Commerce Clause—is rightly scrutinized to determine whether it violates the equal protection component of the Fifth Amendment. *See, e.g.*, *Morton*

v. Mancari, 417 U.S. 535 (1974); and *Delaware Tribal Bus. Comm. v. Weeks*, 430 U.S. 73, 84 (1977).

Where legislation—such as ICWA—classifies people based on a "suspect" classification involving an immutable characteristic like race, ethnicity, or ancestry, it must be reviewed by the courts using strict scrutiny. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995) (all racial classifications imposed by federal, state, or local government are analyzed under strict scrutiny). This searching review takes place even where the classification appears "benign," or is intended to help the minority class. *Id.* Because ICWA regulates Indian children based solely on their genetic association and descendancy, it must survive review under strict scrutiny.

A. State Courts Apply ICWA Based on Blood Lineage, Not Political or Cultural Connections to a Tribe

ICWA governs in all legal proceedings that involve the custodial status of an "Indian child." 25 U.S.C. § 1911. An Indian child is defined as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. § 1903(4).

While this Court has upheld classifications targeting members of Indian tribes where the connections were based on social, cultural, or political relationships, *see United States v. Antelope*, 430 U.S. 641, 646 (1977); *Moe v. Salish & Kootenai Tribes*, 425 U.S. 463, 480-81 (1976); and *Morton v. Mancari*, 417 U.S. 535, 554 (1974) ("The preference, as applied, is

granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities."), ICWA ignores any such connection, instead using blood lineage as the means to establish its application.[4] Racial classifications suggest that race matters—or even defines an individual. *See Anderson v. Martin*, 375 U.S. 399, 402 (1964). All children deserve the equal protection of state laws, especially when it must be applied to make difficult decisions about the best interests of vulnerable children. Those interests should not be overridden because of ancestry or blood quanta.

ICWA applies based on tribal membership or eligibility. 25 U.S.C. § 1903(4). But like the tribe here, nearly all Indian tribes have crafted eligibility requirements based solely on ancestry and ICWA gives those private classifications public effect. The application of ICWA thus does not turn on the tribe's sovereign "political" interest in preserving the social and cultural connections of existing tribal members. Instead, ICWA applies regardless of how little connection a child might have to a tribe.

ICWA does not, for example, consider whether the family participated in the tribe's cultural, community, or political events, or whether they held social ties with the tribe. *See In re Bridget R.*, 49 Cal. Rptr. 2d

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[4] Although enrollment criteria are set by each tribe's governing documents, practically speaking, almost all federally recognized tribes require either "lineal descent from someone named on the tribe's base roll" or "lineal descent from a tribal member who descends from someone whose name appears on the base roll." U.S. Dep't of the Interior, Bureau of Indian Aff., *A Guide to Tracing American Indian & Alaska Native Ancestry*, https://www.bia.gov/cs/groups/public/documents/text/idc-002619.pdf

507, 531-32 (1996) (describing a long list of factors other than blood that would indicate whether a person maintained political ties with a tribe). It does not consider the family's self-identification—ICWA will apply based on a child's blood even if their Native American parents deliberately sought to distance themselves from the tribe. It does not consider whether the child has ever stepped foot on tribal lands, or whether they have any contact with relatives who are members of a tribe. The law will apply based solely on ancestry.

When applied, ICWA's placement preferences demand only that an Indian child be sent to "*an* Indian" foster facility approved by "*an* Indian tribe" without consideration of the child's actual tribal membership or heritage. ICWA gives preference to placing an Indian child with an Indian family even if that family belongs to a different, culturally distinct tribe. 25 U.S.C. § 1915(a). In those situations, the tribe's sovereign political interests in the child are nonexistent. Conversely, ICWA will not apply to children who have strong tribal connections if they lack the correct blood lineage. Children legally adopted into a Native American family who have spent their entire life on tribal lands and are raised with intimate connections to tribal politics and culture cannot qualify as "Indian" under ICWA—unless they also have the right genetic composition.

Because ICWA equates "Indian" with the tribe's blood quantum rules, it equates tribal interests with genetic interests, and therefore dictates that "biology," and not "social, legal, or political identification, makes a person Native American." Solangel Maldonado, *Race, Culture, and Adoption:*

Lessons from Mississippi Band of Choctaw Indians v. Holyfield, 17 Colum. J. Gender & L. 1, 27 (2008). State courts are required to treat children differently based on nothing other than their blood.

B. State Courts Need Guidance on Whether ICWA Applies Where There Are No Tribal Connections

State courts are in dire need of direction because they conflict on the issue of how to apply the law when there is little to no connection between a child and the tribe. As courts across the country have recognized, where a connection other than blood is lacking, ICWA would serve no other purpose than imposing placement preferences based on race alone—which would likely fail the strict scrutiny required under the Equal Protection Clause. *See, e.g.*, *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013).

Laws that impose racial classifications are constitutional "only if they are narrowly tailored to further compelling governmental interests." *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003). Even where racial classifications appear to be motivated by benign purposes—or even where they are intended to be remedial—searching inquiry is necessary to "smoke out" illegitimate uses of race based on "notions of racial inferiority or simple racial politics." *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion).

ICWA is a race-based distinction and therefore it always raises equal protection concerns. But those concerns are particularly heightened in cases like this, where the children have virtually no connection to the tribe. While the government has a compelling

interest in attempts to remedy past discrimination,[5] *see United States v. Paradise*, 480 U.S. 149, 167 (1987), any law that uses racial classification must be narrowly tailored to that interest. *See Gratz v. Bollinger*, 539 U.S. 244, 269 (2003).

Some courts have sought to avoid equal protection problems by refusing to apply ICWA under a doctrine known as the existing Indian family exception. In *Hampton v. J.A.L.*, 658 So. 2d 331, 333 (La. Ct. App. 1995), a Louisiana court refused to apply ICWA and instead applied the traditional "best interest of the child" test where the child had no significant ties to the tribe. There, the child had been adopted by a couple just months after her birth. The mother later sought to revoke consent to the adoption. But because the child had spent her life outside of the tribe and with a non-Indian family, and because the mother had little ties to the reservation herself, the court held that there was no breakup of an "Indian" family and ICWA did not apply.

Similarly, in *In Interest of S.A.M.*, 703 S.W.2d 603, 609 (Mo. Ct. App. 1986), the court applied the existing Indian family exception where the Indian father had no contact with his daughter for seven years and the child had no contact with the tribe during that time. And in *In re Adoption of Baby Boy C.*, 784 N.Y.S.2d 334, 340-41 (N.Y. Fam. Ct. 2004), a New York family court did the same, noting that the "stake tribes have in children born to parents disconnected from their

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[5] ICWA was passed as a response to the shameful application of states' child protection laws and policies in the mid-twentieth century. *See* Matthew L.M. Fletcher & Wenona T. Singel, *Indian Children and the Federal-Tribal Trust Relationship*, 95 Neb. L. Rev. 885, 952-56 (2016).

Indian roots is less than the interest they have in children born to parents who have retained their Indian identity." It found that given that the purpose of ICWA was to promote the stability of Indian tribes, it would not further that purpose to "create a cultural windfall" by giving tribes jurisdiction over children they would otherwise have little involvement with. *Id.* at 385; *see also Matter of Adoption of T.R.M.*, 525 N.E.2d 298, 303 (Ind. 1988) (declining to apply ICWA where mother sought return of child seven years post-adoption); *Rye v. Weasel*, 934 S.W.2d 257, 263 (Ky. 1996) (no breakup of "Indian family" where child had no association with the tribe and biological parents had no contact with child for over a decade); *S.A. v. E.J.P.*, 571 So. 2d 1187, 1189 (Ala. Civ. App. 1990) (Court would not apply ICWA despite child being "biological[ly]" Indian where no relationship with tribe); *Claymore v. Serr*, 405 N.W.2d 650, 654 (S.D. 1987) (same).

However, state courts remain divided on whether ICWA can be applied in the absence of existing tribal connections. Application in those circumstances invites the question of whether ICWA is sufficiently narrowly tailored to the government's interest in preserving the relationship between tribes and their future generations. *See Adoptive Couple*, 133 S. Ct. at 2552. If ICWA applies to the children in this case, it applies based solely on their descendancy—relegating them to separate and unequal standards on the basis of their genetic composition. This would undoubtedly be unconstitutional if it were applied to any other race. *See Palmore v. Sidoti*, 466 U.S. 429, 431 (1984) (state may not take into account the race of the custodians in custody proceedings); *Rice v. Cayetano*, 528 U.S. 495, 514 (2000) (law limiting

voters to persons whose ancestry qualified them as "Hawaiian" was a race-based voting qualification that failed strict scrutiny). This Court has previously recognized that the possibility that ICWA may place "certain vulnerable children at a great disadvantage solely because an ancestor—even a remote one—was an Indian . . . would raise equal protection concerns." *See Adoptive Couple*, 133 S. Ct. at 2552. This case demonstrates that this Court's concern is well founded.

CONCLUSION

ICWA was passed in response to shameful actions by state courts and private institutions undertaken out of paternalistic notions of what was "best" for Indian children. Those mistaken notions led to years of Indian children receiving different treatment in state court custodial proceedings, creating a de facto presumption that Indian children would be better off removed from their Indian families and raised away from their Indian tribe. Unfortunately, ICWA suffers from its own paternalistic notions, now leaving Indian children in state court custodial proceedings facing a de jure removal of their state court protections—based solely on their race.

Because a race-based congressional intrusion into private, state-court proceedings raises several serious issues of national importance, this Court should grant certiorari to review the constitutionality of ICWA.

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Respectfully submitted,

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