No. 12-399

In The Supreme Court of the United States

ADOPTIVE COUPLE,

Petitioners,

v.

BABY GIRL, A MINOR UNDER THE AGE OF FOURTEEN YEARS, *ET AL.*,

Respondents.

ON WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

BRIEF OF CASEY FAMILY PROGRAMS, CHILD WELFARE LEAGUE OF AMERICA, CHILDREN'S DEFENSE FUND, DONALDSON ADOPTION INSTITUTE, NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, VOICE FOR ADOPTION, AND TWELVE OTHER NATIONAL CHILD WELFARE ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT BIRTH FATHER

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QUESTIONS PRESENTED

I. Whether an Indian child's biological father who has expressly acknowledged that he is the child's father and has conclusively established that he is the father through DNA testing is the child's "parent" within the meaning of the Indian Child Welfare Act of 1978 ("ICWA"), 25 U.S.C. §§ 1901-1963.

II. Whether ICWA governs state proceedings to determine the custody of a minor whom all parties concede to be an "Indian child" within the meaning of the Act.

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are 18 national child welfare organizations with decades of firsthand experience

[1] This brief is filed with the written consent of all parties through universal letters of consent on file with the Clerk. No counsel for either party authored this brief in whole or in part, nor did any party or other person make a monetary contribution to the brief's preparation or submission.

developing and implementing the best practices and policies for child welfare decisionmaking, including custodial determinations. *Amici* are united in their view that, in the Indian Child Welfare Act, Congress adopted the gold standard for child welfare policies and practices that should be afforded to all children, and that it would work serious harm to child welfare programs nationwide for this Court to curtail the Act's protections and standards. Identity and statements of interest of each *amicus curiae* are in the appendix to this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

On the law, this case is straightforward. As respondent Father explains, the statutory interpretation questions are controlled by ICWA's plain text and purpose, and were properly resolved by the South Carolina Supreme Court. In practice, the Indian Child Welfare Act ("ICWA"), 25 U.S.C. §§ 1901-1963, is readily administrable by competent professionals in the field who approach their legal and occupational obligations in good faith. What makes this case hard is the same thing that makes an unfortunate number of child custody disputes difficult: the failure of a party (the Adoptive Couple petitioners) to follow established procedures, and the instability in a child's temporary custody that results. No one understands the human toll custody disputes can take more than *amici*, 18 child welfare organizations who have dedicated literally scores of years to the on-the-ground development and implementation of best practices and policies for child placement decisionmaking. *Amici* have seen up close what works, and what does not. In *amici*'s collective

judgment, ICWA works very well and, in fact, is a model for child welfare and placement decisionmaking that should be extended to all children. Much forward progress in the child welfare area would be damaged by rolling the law back.

1. ICWA embodies and enforces the best practices for child custody decisions that should be afforded to all children and in all the varied contexts in which child custody determinations must be made, including prospective adoptions. This best-practices framework happens to be implemented here in the context of Indian children and parents. But that is because Indian affairs is a rare realm in which Congress has direct power to legislate with respect to domestic relations. What is most relevant here is that the protections, stability, consistency, and transparency that ICWA prescribes fully comport with the best framework for custodial decisionmaking for all children, biological parents, foster parents, and prospective adoptive parents.

ICWA establishes the optimal legal regime by which children may become eligible for adoption. It is in the best interests of children, parents, and prospective parents to have a stable legal process that ensures transparency, careful adherence to the law, and full due process before a child's relationship with her fit and willing parent can be permanently cut off by the government. ICWA thus embraces the bedrock principle of child welfare that, prior to a permanent, final placement, it is in the best interests of the child to support, develop, and maintain that child's ties to her acknowledged, interested, and fit birth parents.

2. ICWA's statutory requirement that active efforts be made to support and develop the bonds between a child and her fit birth parents, 25 U.S.C. § 1912(d), implements that principle and reflects the gold standard for child welfare practice that should be aspired to for all children. So too does ICWA's mandate that a child's ties to her parent not be permanently severed absent a finding that a continued relationship with the birth parents would result in "serious emotional or physical damage to the child," *id.* § 1912(f). Those statutory requirements are critical to preserving and supporting the relationships between children and birth parents in the time period before a new family might be formally created through a final adoption, and they are wholly consistent with the best practices and policies that *amici* implement and support throughout the child welfare system.

Congress also recognized in ICWA that there are times when a child's ties to her biological parents should be severed, and that adoption serves a critically important—indeed, essential—role in child welfare at that point. Here, too, ICWA's procedures reflect the highest standards in adoption practice of self-determination, informed decisionmaking, and open communication involving both parents. The point at which a child's ties to one set of parents ends and a new set of parental relationships is formally created is necessarily fraught with emotion and is a pivotal moment in the lives of the child, biological parents, and potential adoptive parents.

ICWA ensures that a child's ties to any acknowledged, interested parent are severed only after both acknowledged birth parents make a

knowing and voluntary decision to permanently relinquish parental rights, and that the parents have sufficient time to reconsider their decision in the time period before a new adoptive family is formed. 25 U.S.C. §§ 1913(a), (c). Those requirements for deliberation and solemnity in the relinquishment of parental ties together give effect to the foundational child welfare principle that, until a new family is formally created through adoption, it is in a child's best interest to support and encourage her ties with her acknowledged, interested parents.

3. Finally, petitioners' invitation to this Court to rewrite the rules in the context of infant adoptions—or to allow court-by-court, case-by-case judgments that refashion the governing legal standards and procedures—threatens to bring about the very harms, instabilities, and inconsistencies against which the *amici* child welfare organizations have long labored. ICWA is a model for best child welfare practices that is now mirrored in numerous state laws. This Court should not destabilize that governing and effective framework. To do so would turn the clock backwards on the practices that *amici* know work best in practice in the multifaceted contexts in which such custodial disputes arise.

ARGUMENT

I. THE BEST PRACTICES IN CHILD WELFARE OF ENSURING STRONG SAFEGUARDS BEFORE SEVERING A CHILD'S TIES TO AN ACKNOWLEDGED, INTERESTED, AND FIT PARENT ARE EMBODIED IN ICWA

In their collective decades of experience on the front lines working within child welfare programs across the United States, *amici* have dealt with a broad variety of substantive and procedural standards governing the care and custody of children. Based on their firsthand experience, *amici* understand intimately what helps and what harms, what works best and what functions poorly. Based on their experience, the child welfare community has developed best practices for child-welfare decisionmaking that bring much-needed transparency and stability to this acutely difficult area of the law and ensure that the best interests of children are protected and advanced.

In formulating federal standards governing custodial decisionmaking for Indian children "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families," 25 U.S.C. § 1902, Congress adopted in ICWA rules that embody and give effect to those best practices in child welfare. Accordingly, in portraying the law as a "[p]referential right[]" (Pet. Br. 3) for Indian parents or children, petitioners get it exactly backwards. Congress adopted the experience-tested, best-practices framework for custody decisions. To be sure, ICWA applies only to Indian children and

parents. But that is because Indian affairs is one of the rare areas falling within Congress's direct, plenary legislative authority over domestic relations. As *amici* can attest, and as the parallel laws of many States reflect, ICWA enforces the gold standard for child welfare decisions for all children. And to unravel its protections could cause significant harm.

A. Best Practices In Child Welfare Encourage And Support The Maintenance Of A Child's Ties To Her Fit And Willing Parents

Amici work in child welfare across the spectrum of proceedings in which the relationships of children to their birth parents are affected, from family support and advocacy services, to foster care and kinship placements, to the permanent termination of parental rights, and to the creation of new families through adoption. Through decades of experience, *amici* have found that the cornerstone of an effective child welfare system is the presumption that children are best served by supporting and encouraging their relationship with fit birth parents who are interested in raising them and are able to do so safely.[2]

This principle is reflected in a number of best practices in child welfare that seek to limit the separation of children from parents, foster reunification, encourage the development of ties with

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[2] *Amici* use "parent" as Congress's plain text indicates—to include all birth parents, excepting only unwed fathers who have not acknowledged or established their paternity. *See* 25 U.S.C. § 1903(9). *Amici* adopt the terminology of the parties and the Questions Presented in referring to "biological" parents.

previously absent fathers, and identify appropriate placements for children who cannot or will not be raised by one or both parents.

First, the standard-setting practice in child welfare is to provide appropriate support and services to parents and families *before* there is any separation of a child from either birth parent. Accordingly, an animating principle for child welfare agencies is to provide the right family support services at the right time. Intensive family preservation services have been shown to significantly reduce the number of children separated from their birth parents. *See* Kristine Nelson, *et al.*, *A Ten-Year Review of Family Preservation Research* 1 (2009). It is likewise a best practice to engage *both* parents and provide services to them before and immediately following birth to support and encourage the development and preservation of child-parent ties.[3]

Early outreach and engagement is particularly important for birth fathers. *See* National Quality Improvement Center on Non-Resident Fathers and the Child Welfare System, *Identifying and Locating Noncustodial Fathers in Child Protection Cases*, Judicial Bench Card 1 (2011) ("Identifying and locating fathers early helps children establish or maintain important connections with their fathers

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[3] Programs serving this role include Nurse Family Partnership, which offers home visits and other assistance to pregnant mothers and first-time parents, *see* http://www.nursefamilypartnership.org/Proven-Results, and Parents as Teachers, which offers services to mothers and fathers of children from birth to age three, *see* http://www.parentsasteachers.org.

and paternal relatives."); ABA Center on Children and the Law, *Policy and Practice Reform to Engage Non-Resident Fathers in Child Welfare Proceedings* (2008).

Second, if temporary separation of a child from her birth parents is unavoidable, the presumptive initial goal of the child welfare system is reunification because, where parents are fit and capable, reunification is the most desirable permanent outcome for children. *See* National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 5 (2000) ("Consistent with child safety, families should be preserved, reunified and strengthened so they can successfully rear their children."); *see also* Child Welfare Information Gateway, *Supporting Reunification and Preventing Reentry Into Out-of-Home Care* 1 (2012) ("Once a child or youth has been removed from the care of his or her parents, safe and timely family reunification is the preferred permanency option."); Child Welfare Information Gateway, *Family Reunification: What the Evidence Shows* 2 (2011). To this end, it is a best practice to strongly support communication and visitation between, as well as services for, a child and her parents even while a child is in a temporary custodial placement, so that the parental relationship can develop and grow. *See* Casey Family Programs, *Timely Permanency through Reunification* 106-107 (2012).

Third, *amici* are unanimous that it is a best practice to preserve a child's ties with her fit, willing birth parents even if those ties are initially

undeveloped due to separation of the child from the parents shortly after birth, as may happen with an adoption placement made at birth. In fact, child welfare agencies following best practices promote reunification and turn to alternative placement (*e.g.*, adoption) only "when the [birth] family is unable or unwilling to provide for the child's safety and protection." CWLA, Standards of Excellence for Adoption Services § 1.9 (2000) ("Adoption Standards").[4] The Adoption Standards expressly provide that, in proposed at-birth adoptions, "[t]he first goal *** is reunification of the child with the birth parents." Adoption Standards § 4.14; *cf. Santosky v. Kramer*, 455 U.S. 745, 760 n.11 (1982) ("Some losses cannot be measured. In this case, for example, [a child] was removed from his natural parents' custody when he was only three days old; the judge's finding of permanent neglect effectively foreclosed the possibility that [he] would ever know his natural parents.").

Accordingly, special care must be taken when there is an initial voluntary adoptive placement of a child at birth. For such placements, best practices first require that "prospective adoptive parents with whom the child is placed should fully understand the legal risk," and that they be "advise[d] *** that the birth parents may request return of the child." Adoption Standards § 3.5; *see* Donaldson Adoption Institute, *Safeguarding the Rights and Well-Being of Birthparents in the Adoption Process* 44 (2007) (best

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[4] *Available at* http://www.cwla.org/programs/standards/cwsstandards.htm.

practice is to "[l]egally mandate a minimum of several days to a week after childbirth before a relinquishment can be signed and require a significant revocation period during which return cannot be contested, except under extraordinary circumstances[]"). And "[t]he first permanency plan *** is to provide services to the birth parents to determine whether they are willing and able to assume parenting responsibilities for their child." Adoption Standards § 4.14.

Fourth, it is critically important that early efforts be made to identify and involve previously absent fathers. *See* Casey Family Programs, *supra*, at 116. When a child's single custodial parent is unable or unwilling to take care of a child, it is a key best practice in child welfare to locate and seek safe placement with the other parent before seeking any other placement. National Child Welfare Resource Center for Family-Centered Practice, *Best Practice Next Practice: Family-Centered Child Welfare* 17 (2002) ("Before placing a child in an unrelated home, fathers' and paternal family members' homes are assessed for placement."); U.S. Dep't of Health & Human Servs., *What About the Dads?* vii (2006) ("Engaging fathers of foster children can be important not only for the potential benefit of a child-father relationship *** but also for making placement decisions and gaining access to resources for the child.").

Finally, in cases where both parents are unavailable, the next step is to look to a child's extended family. *See* National Council of Juvenile and Family Court Judges, *supra*, at 10–11 (2000) ("An appropriate relative who is willing to provide

care is almost always a preferable caretaker to a non-relative."); Adoption Standards § 1.10 ("The first option considered for children whose parents cannot care for them should be placement with extended family members when a careful assessment clearly indicates the ability, willingness, and capacity of those individuals to care for the children."). Recourse to the extended family is advised because kinship care "maximizes a child's connection to his or her family." Adoption Standards § 8.24; *see* Tiffany Conway & Rutledge Hutson, *Is Kinship Care Good for Kids?* 2 (2007) ("[T]he research tells us that many children who cannot live with their parents benefit from living with grandparents and other family members.") (emphasis omitted); D. Rubin, *et al.*, *Impact of Kinship Care on Behavioral Well-Being for Children in Out-of-Home Care*, 162 Archives of Pediatrics & Adolescent Medicine 550-556 (2008); M. Winokur, *et al.*, *Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes*, 89 Families in Soc'y: J. Contemp. Soc. Sciences 338-346 (2008).

Where, as here, an acknowledged, fit and loving father steps forward soon after birth and immediately upon learning that the birth mother will no longer be caring for the child, best practices in child welfare require that the relationship be engaged and supported. *See* Adoption Standards § 2.2 ("The agency providing adoption services should provide services to birth fathers equivalent to those it provides for birth mothers. Birth fathers have the right to parent their children, with or without the birth mother.").

B. Following Consistent, Transparent, Informed, And Deliberate Procedures Before Severing Parent-Child Ties Is A Critical Component Of Best Practices

In *amici's* experience, the best outcomes for children are achieved through a consistent and transparent system that provides for due process and fully informed, deliberate decisionmaking before terminating a child's ties to birth parents and formally creating a new family. When the proper procedures are followed and when children "cannot be raised by their birth parents"—and only then—adoption is an essential component of an effective child welfare program because it "is the permanency option most likely to ensure protection, stability, nurturing, and lifelong relationships throughout" childhood and adulthood. Adoption Standards § 1.4.

1. Procedures Must Afford Consistency Through the Application of Rules Rather Than Unstructured, Ad Hoc Judgments

It is a key best practice to require courts to follow pre-established, objective rules that operate above the charged emotions of individual cases and presume that preservation of a child's ties to her biological parents is in her best interests. *See* National Council of Juvenile and Family Court Judges, *supra*, at 14.

This Court, in fact, has recognized that application of the best-interests-of-the-child standard should be guided by substantive rules and

presumptions because "judges too may find it difficult, in utilizing vague standards like 'the best interests of the child,' to avoid decisions resting on subjective values." *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816, 835 n.36 (1977). And courts should not terminate a child's relationship to a parent or parental rights based on "imprecise substantive standards that leave determinations unusually open to the subjective values of the judge," *Santosky*, 455 U.S. at 762-763, without some grounding in a decisional framework of the type that ICWA provides.

This is a case in point. Guided by ICWA's codification of best practices, both the South Carolina trial court and Supreme Court agreed that allowing Baby Girl to be raised by her Father was in her best interests. That stood in sharp contrast to the guardian ad litem's subjective—and, in *amici*'s view, entirely baseless and harmful—judgment that "best interests of the child" have something to do with the prospective parents' provision of "private school[s]" or "beautiful home[s]." *See* Resp. Father Br. 12.

As a corollary to that best practice, the goal of parental unification should not be set aside simply because a child has formed a bonded relationship with a temporary custodian. Of particular relevance here, "any direct placement upon the child's discharge from the hospital is to be seen as a 'legal risk' placement," for which the "first goal" is "reunification of the child with the birth parents." Adoption Standards §§ 3.5, 4.14. Where temporary custody arrangements are warranted, it is best practice to bring temporary custodians and birth parents together in a collaborative process working

towards the goal of preserving a child's ties to her birth parents if possible. *See id.*; Casey Family Programs, *supra*, at 117.

And when decisions must be made regarding the termination of the parent-child relationship, the best practice for ensuring consistent, careful, unbiased decisionmaking that does not depend on the vagaries of temporary custodial arrangements is to have a two-step process. The first step is to decide whether a child's birth parent is currently able and willing to safely raise her. If so, the second step is to enforce a presumption that it is in the child's best interest to be in the care of that birth parent. Only if the answer is negative at the first step should other placements, including the child's then-existing relationships with temporary caregivers, be considered. *See* Adoption Standards § 4.24 (only once "return to the birth parents is not possible" and "relative adoptions have been ruled out" should an agency "identify and prepare a new, unrelated adoptive family for the child.").[5]

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[5] This best practice is reflected in many States' laws. *See* Child Welfare Information Gateway, *Determining the Best Interests of the Child: Summary of State Laws* 2 (2012) (a preference for family integrity is the most frequently stated guiding principle in state statutes for determining the best interest of the child); *see also In re Michael B.*, 604 N.E.2d 122, 130 (N.Y. 1992) ("To use the period during which a child lives with a foster family, and emotional ties that naturally eventuate, as a ground for comparing the biological parent with the foster parent undermines the very objective of voluntary foster care as a resource for parents in temporary crisis[.]"); *In re Halloway*, 732 P.2d 962, 971-972 (Utah 1986) ("The adoptive parents argue that we should consider the bonding that has taken place

2. Voluntary Relinquishment Should Be Accomplished Only through Careful Adherence to Open, Informed, and Deliberate Procedures

Transparency and deliberate decisionmaking sit at the core of best adoption practices. "All adoption services should be based on principles of respect, honesty, self-determination, informed decision-making, and open communication." Adoption Standards at 6.

To further those goals, a key standard of best adoption practices is that *both* parents be supported and "fully informed" regarding the adoption, and that the child welfare or adoption agency should not accept a voluntary relinquishment of a child until both of "the birth parents have received full and accurate information about the consequences" of their decision, have had "an opportunity to reach a decision that they recognize is best for both themselves and the child," and "have come to understand that their decision is a final one, consistent with *** statutory time frames for revocation." Adoption Standards § 2.5. Both parents should be involved because "[b]irth fathers have the right to parent their children, with or without the birth mother," and "the agency should work closely with [the birth mother]" to identify and locate the birth father. *Id.* § 2.2.

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between themselves and Jeremiah in reaching a decision in this matter. *** Such a standard would reward those who obtain custody *** and maintain it during any ensuing (and protracted) litigation.").

If there is disagreement between the parents, the Standards support providing "skillful counseling *** to help all parties reach agreement," but in any event an agency "should provide services to birth fathers equivalent to those it provides for birth mothers." Adoption Standards §§ 2.1, 2.2. Best practices recognize that a birth mother might desire to avoid communication with an estranged birth father. For that reason, the Standards place the obligation to affirmatively contact and engage the absent parent upon the agency—whose client is neither the birth mother, nor prospective adoptive parents, but the child and her best interests. *Id.* at 5, §§ 2.1, 2.2.

3. Timely and Transparent Decision-making According to Legislative Procedures that Guide the Best Interests Inquiry Is the Best Practice for Minimizing the Disruption to Children

It indisputably can be difficult for children to shift from one custody arrangement to another. *Amici* witness that pain firsthand far too frequently. The best practices in child welfare work to limit the adverse effects of such disruption by mandating careful adherence to procedures that minimize errors in temporary or initial custodial placements. For example, the maintenance of open communication, transparent proceedings, and deliberate decision-making in adoption proceedings ensures that no placement is made until both birth parents have reached a final and affirmative decision that it is in the best interest of the child to sever parental ties and be placed permanently in a different custodial

arrangement. When the governing legislative procedures are adhered to, there is less risk of an erroneous temporary placement that must be undone. Best practices thus mandate that, "[w]hen American Indian children are placed with adoptive families, the agency providing adoption services should comply fully with the provisions of" ICWA. Adoption Standards § 3.9.

A second vital practice is for courts to expedite decisions in this area. The answer to the "concern that shuttling children back and forth *** may be detrimental," is for courts to "protect the well-being of the affected children *** through the familiar judicial tools of expediting proceedings and granting stays where appropriate." *Chafin v. Chafin*, 133 S. Ct. 1017, 1026-1027 (2013). The way to avoid disruptive shifts in custody, in other words, is by adherence to the law and best practices in the first instance, not to "'reward those who obtain custody, whether lawfully or otherwise, and maintain it during any ensuing (and protracted) litigation,'" *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 54 (1989) (citation omitted).

It would turn child welfare best practices upside down if temporary foster care or contested non-final adoptive placements, however erroneous, could justify courts' disregard of governing legislative rules providing substantive and procedural safeguards for preserving a child's ties to her fit and willing birth parents. Rather, best practices avoid such an outcome by engaging both birth parents early in the process, evaluating their ability and willingness to parent their children, and transparently and consensually finding a suitable adoptive placement

for the child if that is required. To be sure, once an adoptive family is formally created in accordance with those procedures, the adoptive parents gain the same fully-protected status as birth parents—but not before then.

Again, this is a case in point. The acknowledged heartbreak of a child leaving a temporary custody situation after two years is the consequence of the petitioners' adoption agency's circumvention of governing Oklahoma and federal law and the failure to adhere to best practices which *amici* have long advocated—not an improper delay in the biological father's expression of his interest. The conduct in this case—(i) the apparent rush to remove Baby Girl from Oklahoma without the involvement of Father or his family, Pet. App. 7a, (ii) concealment of the decision to place Baby Girl for adoption from Father until four months *after* she had been removed from Oklahoma (and, even then, to confront him in a parking lot with papers rather than engaging him constructively consistent with best practices), *id.* at 8a-9a, and (iii) petitioners' efforts "to prevent Father from obtaining custody of Baby Girl since she was four months old," *id.* at 27a—conflicts with professional standards in the field (as well as the law).

Specifically, petitioners would not have been able to take Baby Girl to South Carolina had the proper Oklahoma procedures been followed. Pet. App. 8a. That is because Oklahoma law precludes the out-of-state placement of any child who falls within ICWA unless the Oklahoma Administrator of the Interstate Compact on the Placement of Children first ensures compliance with ICWA. *See Cherokee*

Nation v. Nomura, 160 P.3d 967, 977 (Okla. 2007). Under both ICWA and the Oklahoma Act, the express consent of Father was required for any adoptive placement. *See In re Baby Boy L.*, 103 P.3d 1099, 1105-1106 (Okla. 2004) (under state law, ICWA applies, including its parental-consent requirements, even when an unwed non-Indian mother placed a child for adoption at birth). Accordingly, had petitioners' adoption agency not misreported Baby Girl's ICWA status on the placement form, the compact administrator would not have approved the out-of-state placement. *See* Pet. App. 8a n.8.

It thus would be particularly inappropriate for petitioners' contested custody to overcome Oklahoma's and Congress's policy judgment, grounded in best practices, in favor of supporting and preserving a child's ties to her birth parents. *See* OKLA. STAT. title 10, § 40.3. Compliance with the law also would have prevented the problem of which petitioners and the guardian ad litem now complain: that once they had the child in their home for a significant period of time, the law should find a way for them to be allowed to keep the child permanently. For very good reason, neither the law nor best practices work that way.

C. Those Best Practices Are Consistent With The Nation's Deep-Rooted Traditions

This Court has long recognized the deep roots in our society of the best-practices presumptions that (i) fit and willing parents act in their children's best interest, and (ii) termination of the child-parent

relationship demands the most careful adherence to deliberate procedures.

This Court has characterized "[t]he liberty interest *** of parents in the care, custody, and control of their children" as "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Accordingly, "until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Santosky*, 455 U.S. at 760.

Those "natural bonds of affection lead parents to act in the best interests of their children." *Parham v. J.R.*, 442 U.S. 584, 602 (1979). Because "there is a presumption that fit parents act in the best interests of their children," the law should generally not "inject itself into the private realm of the family to further question the ability of that [fit] parent to make the best decisions concerning the rearing of that parent's children." *Troxel*, 530 U.S. at 68–69. Indeed, even "when blood relationships are strained," so long as "there is still reason to believe that positive, nurturing parent-child relationships exist," the interest of the State in child welfare "favors preservation, not severance, of natural familial bonds." *Santosky*, 455 U.S. at 753, 766-767.

The vast majority of States likewise recognize the presumption that it is in a child's best interest to preserve, develop, and support ties to her fit birth parents unless and until those ties must be permanently severed. This presumption is reflected

in the common law and state statutes.[6] When fit parents contest custody against non-parents, state judges are generally not free to exercise unbridled discretion. Instead, the starting point is a rebuttable presumption that promoting and strengthening a child's ties with an interested birth parent is consonant with the child's best interests. *See, e.g.*, *In re B.G.C.*, 496 N.W.2d 239, 241 (Iowa 1992) ("[A]doptions are solely creatures of statute. *** [W]ithout established procedures to guide courts in such matters, they would 'be engaged in uncontrolled

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[6] *See, e.g.*, *Smith v. Smith*, 97 So. 3d 43, 46 (Miss. 2012) ("In custody battles between a natural parent and a third party, it is presumed that it is in the child's best interest to remain with his or her natural parent."); *Ex parte A.R.S.*, 980 So. 2d 401, 404 (Ala. 2007) ("This Court has repeatedly recognized a presumption in favor of a child's natural parents[.]"); *In re Guardianship of B.H.*, 770 N.E.2d 283, 287 (Ind. 2002) (recognizing "the important and strong presumption that the child's best interests are ordinarily served by placement in the custody of the natural parent"); *Price v. Howard*, 484 S.E.2d 528, 534 (N.C. 1997) ("A natural parent's constitutionally protected paramount interest in the companionship, custody, care, and control of his or her child is a counterpart of the parental responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interest of the child."); *Paquette v. Paquette*, 499 A.2d 23, 30 (Vt. 1985) ("[W]e agree with those courts that recognize a presumption that the best interest of a child will be served by granting custody to a natural parent."); UTAH CODE ANN. § 62A–4a–201(1)(c) ("It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents."); CONN. GEN. STAT. § 46b-56b ("In any dispute as to the custody of a minor child involving a parent and a nonparent, there shall be a presumption that it is in the best interest of the child to be in the custody of the parent[.]").

social engineering.'"); *cf. In re Michael B.*, 604 N.E.2d 122, 127 (N.Y. 1992) ("A biological parent has a right to the care and custody of a child, superior to that of others, unless the parent has abandoned that right or is proven unfit to assume the duties and privileges of parenthood, even though the State perhaps could find 'better' parents.").

Of course, once an adoption is finalized, that new parent-child relationship gains equivalent stature under our traditions. *See Smith*, 431 U.S. at 844 n.51 ("Adoption *** is recognized as the legal equivalent of biological parenthood."). But until an adoption is finalized, it is consistent with both best child welfare practices and this Nation's deep-rooted traditions to recognize a presumption in favor of custody by a fit and willing birth parent, regardless of emotional bonds developed in temporary custodial placements. *Cf. Santosky*, 455 U.S. at 761 (Court had "no difficulty finding that the balance of private interests strongly favors heightened procedural protections [for birth parents].").

D. ICWA Implements And Enforces Those Child Welfare Best Practices

In ICWA, Congress was faced with the need to develop a body of family law in one area where Congress, rather than the States, can directly legislate regarding such matters—Indian affairs. *See* 25 U.S.C. § 1901(1) (invoking "Congress['s] *** plenary power over Indian affairs"). The body of law that Congress developed applies across a broad range of involuntary proceedings to terminate parental rights, regardless of the post-termination placement of children. *See id.* § 1912(a) (governing any

"involuntary proceeding in a State court" seeking foster care placement or termination of parental rights); *id.* § 1903(1) ("child custody proceeding" includes any foster care placement, termination of parental rights, preadoptive placement, or adoptive placement). In developing federal standards to apply across that range of parental-rights termination proceedings, *id.* § 1902, Congress properly embraced for Indian children the key best practices that in *amici's* experience serve the best interests of all children.

1. ICWA Encourages and Supports the Maintenance of a Child's Ties to Her Fit and Willing Parents

Consistent with child welfare best practices, Congress sought in ICWA to increase the likelihood that parent-child and familial relationships would be preserved by requiring that "active efforts" to support and develop a child's relationship with her birth parents be made before that relationship is permanently ended. Specifically, ICWA requires that any party seeking to "terminat[e] *** parental rights to[] an Indian child under State law" must "satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family." 25 U.S.C. § 1912(d); *compare* Adoption Standard § 2.5 (establishing counseling and support services for both birth parents as a best practice).

Also fully consistent with best practices in child welfare is the requirement to engage extended families in order to support, develop, and maintain

family relationships. *Compare* 25 U.S.C. § 1915(a)(1) (instituting preference for placement with "a member of the child's extended family" when it is necessary to terminate parental relationships), *with* Adoption Standards at 6 ("[T]he extended family should be supported as the first option for adoptive placement, if appropriate.").

ICWA also implements the best practice principle in child welfare of presuming that it is in a child's best interests to preserve her ties with a birth parent who is fit and interested in raising her. ICWA does so by limiting the "termination of the parent-child relationship," 25 U.S.C. § 1903(1)(ii), to circumstances in which "the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child," *id.* § 1912(f); *compare* CWLA, Standards of Excellence for Services to Abused and Neglected Children and their Families § 1.24 (1998) ("The removal of a child from the home *** is a drastic action that should be considered only when there is imminent danger to the child's life and safety, or when other measures to alleviate risk have failed or will not provide sufficient protection.").

Contrary to petitioners' argument (Br. 35-39), it is fully consistent with best practices, as well as state practice involving similar statutes, for ICWA to speak in terms of "returning" a child to a birth parent, or "removing" a child from a birth parent, even if that parent never had custody, or had custody for only a brief moment at birth. For example, in *In re Michael B.*, the New York Court of Appeals explained that state law requiring the child welfare agency to make "reasonable efforts" for a child to

"return to the natural home" included efforts to support the birth father's relationship with the child, even though the father's identity was unknown when the child was placed in foster care and the child had never lived with him. *See* 604 N.E.2d at 314-315.

Thus, in mandating a strong showing of parental unfitness in any involuntary termination proceeding and especially in requiring active efforts to support existing child-parent relationships before they are permanently and irrevocably severed, 25 U.S.C. §§ 1912(d), (f), ICWA is consistent with *amici's* field-tested experience and developed research regarding how best to achieve the most favorable outcomes for vulnerable children and families.

Moreover, ICWA—and child welfare practice broadly—strongly reject the sorts of relative comparisons of the suitability of birth parents and prospective adoptive parents that petitioners and the guardian ad litem urge here. *Compare* Pet. Br. at 7-8, *with* Department of the Interior – Bureau of Indian Affairs Guidelines for State Courts, 44 Fed. Reg. 67,584, 67,593 (Nov. 26, 1979) ("A child may not be removed simply because there is someone else willing to raise the child who is likely to do a better job or [because] it would be 'in the best interests of the child' for him or her to live with someone else.").

2. ICWA Requires the Use of Consistent, Transparent, Informed, and Deliberate Procedures before Irrevocably Severing Parent-Child Ties

In ICWA, Congress balanced support for fit birth parents who are interested in preserving filial ties

with support for the formal creation of new adoptive families when necessary. In *amici*'s view, legitimate, regularized adoptions are an extremely important part of the child welfare system, and ICWA recognizes, affirms, and protects the stability of a new family unit once that family has been formally created and recognized through proper adoption procedures. *See, e.g.*, 25 U.S.C. § 1913(d) (limiting circumstances in which a finalized adoption may be challenged under federal law).

But up until the formal creation of a new family through proper processes, ICWA provides a procedural framework that fully implements the best practices of transparent and deliberate decisionmaking.

First, ICWA ensures consistency by enforcing a uniformly applicable presumption in favor of maintaining parent-child ties, rather than allowing unguided judicial decisionmaking that risks infusing the best-interests-of-the-child standard with case-specific dynamics or biases—such as the baseless stereotypes that the guardian ad litem voiced here, describing the American Indian culture as "including free lunches and free medical care and *** their little get togethers and *** their little dances." Trial Tr. 634; *see generally* 25 U.S.C. § 1912(f); *see also* H.R. Rep. No. 95-1386, 95th Cong., 2d Sess. 19 (1978) (the purpose of ICWA is to serve the best interests of children, but without structure the best interest standard "is vague, at best").

Second, ICWA implements transparency and open communication with respect to adoption proceedings by requiring the party seeking

termination of parental rights to provide specific notice to both parents. 25 U.S.C. § 1912(a); *compare* Adoption Standards §§ 2.1, 2.2 (requiring communication with both birth parents). And it furthers deliberate decisionmaking by establishing procedures that ensure a parent fully understands his decision to relinquish parental rights, is doing so voluntarily, *id.* § 1913(a), and has sufficient time to reconsider the decision within the time period before a new adoptive family is formed, *id.* § 1913(c). These ICWA procedural safeguards are fully consistent with the highest standards in child welfare. *See* Adoption Standards §§1.9, 2.5.

II. ICWA REFLECTS CONGRESS'S JUDGMENT TO ADHERE TO BEST PRACTICES IN CHILD WELFARE, NOT AN INVALID PREFERENCE

A. ICWA Embodies The Best Child Welfare Practice Standards For All Children In An Area Within Which Congress Is Empowered To Legislate

ICWA embodies and gives effect to the best practices, long endorsed by *amici* and echoed in the laws of multiple States, governing the most effective and protective child custody procedures and decisionmaking for all children and families. To be sure, Congress confined its judgment in this statute to Indian children. But that is simply because Indian affairs is one of the rare areas in which Congress exercises direct legislative authority over family law, which is otherwise broadly governed by the States. What is critical is that the lines Congress drew, the balances it struck, and the policy judgments it made

are all solidly grounded in the very best practices for child custody and, indeed, are reflected in the laws of many States as the best practice for *all* child custody decisions. *See* Section I.C, *supra*.

For that reason, petitioners' effort (Br. 43-51) to portray ICWA as creating some special and unwarranted preference for Indian parents is flatly wrong. Congress chose the pathway and practices that are best for *all* children; its legislative reach was just narrower because Congress's direct legislative authority over child welfare matters is narrow, including only a few specialized areas like Indian affairs.

Furthermore, Congress's concern for child welfare best practices is not limited to Indian children, but is reflected in federal legislation addressed to all children. *See* Fred Wulczyn, *Family Reunification*, 14 Children, Families, and Foster Care 95, 96 (2004). For example, the Adoption Assistance and Child Welfare Act of 1980 hinges federal matching funds for foster care expenditures on state law's provision that, in each case, "reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home." Pub. L. No. 96-272 § 101, 94 Stat. 501, 503; *compare* ICWA, 25 U.S.C. § 1912(d) (requiring "active efforts").

The Adoption and Safe Families Act of 1997 amended the "reasonable efforts" standard by providing some aggravated circumstances in which it would not apply, but otherwise reaffirmed Congress's commitment that "reasonable efforts shall be made to

preserve and reunify families" before children are permanently placed elsewhere. 42 U.S.C. § 671(a)(15). And Congress has also funded the kinds of services that are components of the best practices for supporting vulnerable families, such as community-based family support and preservation services, including "preplacement preventive services." *Id.* § 629(a)(1)(B).

Finally, Congress reiterated its judgment that the maintenance of family ties through preferences favoring placement with extended family is in the best interests of all children. *See* 42 U.S.C. § 671(a)(19) ("[T]he State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards."); *see also Miller v. Youakim*, 440 U.S. 125, 142 n.21 (1979) (noting "Congress' determination that homes of parents and relatives provide the most suitable environment for children").

B. Congress Made A Child-Welfare Policy Choice To Apply ICWA's Safeguards To Acknowledged, Unwed Fathers

It is no accident that Congress defined "parent" as it did in ICWA. Contrary to petitioners' contention, Congress's judgment to extend ICWA's gold-standard procedural safeguards to all acknowledged or established biological fathers was not a departure from "established principles" (Pet. Br. 26), but instead was fully consistent with child welfare best practices. Acting against a backdrop of

state laws reflecting a varied approach to protecting a child's nascent relationship with an unwed birth father, Congress made the policy judgment, which many States then shared, that it was in the best interest of children to protect the relationship between a child and a fit, loving father, especially one who (as in this case) always acknowledged paternity and took action to preserve his parental ties immediately upon learning that they might be irrevocably severed. That judgment is consistent with best adoption practices, and subjecting it to the varied happenstance of state laws would defeat that judgment.

1. Congress Enacted ICWA Against a Backdrop of State Laws Reflecting No Consensus Regarding Unwed Fathers

Prior to the enactment of ICWA, this Court had ruled that a State could not, consistent with the Constitution, exclude all unwed fathers from its laws protecting the parent-child relationship. *See Stanley v. Illinois*, 405 U.S. 645, 651 (1972) ("The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection."). The Court had also held, however, that the Constitution does not require that States allow an unwed father who neither lived with nor made any effort to legitimate his child for eleven years to veto a stepfather's adoption of the child. *See Quilloin v. Walcott*, 434 U.S. 246, 254 (1978).

In cases decided after ICWA's enactment, this Court explained that the due process clause afforded

States flexibility in the degree of protection afforded to a father's constitutional interest in the "opportunity *** to develop a relationship with his offspring" when he had not yet developed such a relationship. *See Lehr v. Robertson*, 463 U.S. 248, 265 (1983) (statute giving notice of adoption proceeding only to unwed fathers who register or who meet certain other requirements "adequately protected [father's] inchoate interest in establishing a relationship" with his child).

As this Court has repeatedly emphasized, however, what the due process clause requires and what a legislature may determine is advisable are two different things. *See Robertson*, 463 U.S. at 264 ("Regardless of whether we would have done likewise if we were legislators instead of judges, we surely cannot characterize the state's conclusion as arbitrary."). Consistent with this Court's precedent, States have taken differing approaches to the protection of nascent ties between children and unwed fathers. At the time of ICWA, many States took the view that the best practice was to offer an opportunity for the development and preservation of a child's ties with an acknowledged and interested biological father before irrevocably severing ties through the placement of a child with new parents. At least 16 States, in fact, had adopted the balance drawn by Congress of protecting a child's ties to an acknowledged or established father.[7] Other States

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[7] *See, e.g.* ARIZ. REV. STAT. ANN. § 8-106 (Supp. 1978) (consent of both natural parents necessary); OR. REV. STAT. § 109.312 (1977) (same); R.I. GEN. LAWS § 15-7-5 (1977) (same); S.D. CODIFIED LAWS. § 25-6-4 (1976); WIS. STAT. § 48.84 (1978)

allowed extinguishment of an unwed father's parental ties based on the degree of support provided before the birth, or they required unwed fathers to act very quickly following a child's birth (and before notice of a potential adoptive placement) to preserve the ties.[8] There was no consensus among States as to which approach best served the interests of the child.

Against that backdrop of multiple constitutionally permissible choices, Congress incorporated into ICWA the very best child welfare practices by extending ICWA's procedural safeguards to the nascent ties between acknowledged, interested birth fathers and their children. Congress did this by providing a uniform federal definition of "parent" that expressly includes all biological fathers whose paternity is acknowledged or established. 25 U.S.C. § 1903(9). Congress, moreover, defined that status

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(same); CONN. GEN. STAT. §§ 45-61d, 45-61(i)(b)(2) (1978) (father's consent required if paternity acknowledged or judicially established); FLA. STAT. § 63.062 (1979) (same); KY. REV. STAT. ANN. § 199-500 (West 1978) (same); N.M. STAT. ANN. § 40-7-6 (1978) (same); ALA. CODE § 26-10-3 (1975) (father's consent required when his paternity judicially established); OHIO REV. CODE ANN. § 3107.06 (Page Supp. 1978) (same); MINN. STAT. §§ 259.24(a), 259.263(a) (1978) (father's consent required when identified on birth certificate); N.H. REV. STAT. ANN. § 170-B:5 (1977) (father's consent required if files notice of intent to claim paternity within set time from notice of prospective adoption); WASH. REV. CODE § 26.32.040(5) (1976) (same); W. VA. CODE § 48-4-1 (1976) (father's consent required if father admits paternity by any means).

[8] *See Unwed Fathers: An Analytical Survey of Their Parental Rights and Obligations*, 1979 WASH. U. L. Q. 1029, 1059-1062 (1979) (surveying laws regarding biological father's consent rights).

without reference to state law. *Id.* In contrast, when Congress intended to incorporate varied state law within a defined term in ICWA, it said so expressly. *See id*. § 1903(6) (defining "Indian custodian" to mean "any Indian person who has legal custody of an Indian child *** under tribal law or custom or under State law"). Congress likewise incorporated state law expressly in the definition of "parent" in other child welfare statutes when it so intended. *See* 42 U.S.C. § 675(2) ("The term 'parents' means biological or adoptive parents or legal guardians, as determined by applicable State law.").

This definitional policy choice is simply one more manifestation of the cornerstone child welfare principle running throughout ICWA—that the best practice in child welfare is to preserve and support family ties by procedurally protecting the opportunity for a child to develop and maintain a relationship with a fit, interested, and acknowledged birth parent.

Although the plain text of ICWA's definition of "parent" confirms Congress's policy choice, other provisions of the Act and the legislative history of ICWA corroborate Congress's concerns, not just with the removal of children from developed family relationships, but also with preventing the severance of nascent family ties and supporting and encouraging parental involvement. *See, e.g.*, 25 U.S.C. § 1913(a), (c) (invalidating consent to adoption prior to or within 10 days of birth and permitting revocation of consent "at any time" prior to finalization of adoption); H.R. Rep. No. 95-1386, *supra*, at 12 (noting concern with voluntary relinquishment of parental rights at the hospital); *Indian Child Welfare Program: Hearings before the*

Subcommittee on Indian Affairs, 93d Cong., 2d Sess. 75-77 (1974) (collecting statistics regarding the adoption of Indian children in Minnesota, a large majority of which were infant adoptions under three months of age). Congress, in short, made a reasoned, entirely legitimate, and—in *amici*'s judgment, the preferred—choice among legislative approaches to these difficult child custody issues.

2. Congress's Judgment Would Be Undermined If Subjected to a Patchwork of State Laws

ICWA's purpose of establishing a framework for all child custody proceedings involving Indian children, 25 U.S.C. § 1902, would be destroyed if the critical issue of a child's opportunity to develop and preserve a relationship with her birth father were to be rendered dependent on the happenstance of the birth State, let alone the State of residence of prospective adoptive parents as petitioners contend.

Today, as in 1978, there is no consensus in state law regarding the extent to which adoption and other termination procedures should protect the opportunity for a child and an interested, fit birth father to develop and preserve a parent-child relationship. Many States, however, continue to share Congress's and *amici*'s judgment that it is a best practice to afford strong procedural safeguards before this nascent child-parent relationship is permanently terminated.[9] To subject ICWA to the

[9] *See, e.g.*, *Jared P. v. Glade T.*, 209 P.3d 157, 160 (Ariz. Ct. App. 2009) (biological fathers must receive notice of an adoption and may preserve parental rights upon post-notice steps to establish

vicissitudes of state law would nullify that congressional judgment.

Finally, this Court presumes that, "'in the absence of a plain indication to the contrary, *** Congress when it enacts a statute is not making the application of the federal act dependent on state law.'" *Holyfield*, 490 U.S. at 43 (quoting *Jerome v. United States*, 318 U.S. 101, 104 (1943)). This rule of construction is particularly appropriate in the context of ICWA, where "Congress was concerned with the rights of Indian families and Indian communities vis-à-vis state authorities." *Id.* at 45. No less than with the undefined term "domicile" in *Holyfield*, Congress "could hardly have intended the lack of nationwide uniformity that would result from state-law definitions of" parent. *Id.* "[A] statute under which different rules apply from time to time to the same child, simply as a result of his or her transport from one State to another, cannot be what Congress had in mind." *Id.* at 46.[10]

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paternity); ME. REV. STAT. Title 18-A §§ 9-201(a)-(d), 9-302 (biological father entitled to notice and opportunity to establish paternity prior to adoption); NEV. REV. STAT. § 127.040(1)(a) (both parents must consent to an adoption); VT. STAT. ANN. Title 15A §§ 2-401, 2-402 (identified biological father must consent to the adoption so long as he responds to notice of the adoption); WASH. REV. CODE § 26-33.160(1)(b) (biological father must consent to an adoption absent termination of his parental rights).

[10] In any event, as respondent Father argues (Br. 26-27), even had Congress intended to incorporate state law, there is no reason to believe Congress intended to incorporate state substantive law regarding adoption, rather than state law governing the establishment of paternity, given that the

Instead, the child welfare standards embodied in ICWA enforce the best child welfare practices of transparency, stability, and supporting, developing, maintaining, and preserving the relationships between children and their loving and fit birth parents, up until the moment that those birth relationships are permanently severed and a new family is created. The South Carolina Supreme Court found no reason to permanently sever Baby Girl's ties to Father because "he and his family have created a safe, loving, and appropriate home for her." Pet. App. 32a. That judgment is not only consistent with ICWA's mandates for Indian children, but with best practices for all children.

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definition of "parent" in ICWA applies across every kind of child welfare proceeding, not just adoption. State laws distinct from adoption-consent statutes address how "paternity" may be "acknowledged" or "established," and application of South Carolina paternity law would comport with the judgment in this case. *See, e.g.*, S.C. CODE ANN. Regs. § 63-17-10(C) ("action to establish the paternity of an individual").

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of South Carolina should be affirmed.

Respectfully submitted.

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APPENDIX

Casey Family Programs is the nation's largest operating foundation focused entirely on foster care and improving the child welfare system. Casey Family Programs has provided direct family services to children and families involved in public and tribal foster care systems for more than forty years. It also works to improve the child welfare system by consulting with child welfare agencies and providing research and education to policymakers about best practices in the child welfare area. The Indian Child Welfare Act both embodies and has served as a model for child welfare principles and policies that are critical to Casey Family Programs' work.

Established in 1920, the Child Welfare League of America ("CWLA") is the nation's oldest and largest membership-based child welfare organization. CWLA is a coalition of public and private agencies serving vulnerable children and families, including those in tribal communities, by advancing standards of excellence, accreditation, and the best research-based practices with respect to child welfare work. In particular, CWLA is recognized nationally as the standard-setter for child welfare services and publishes thirteen "Standards of Excellence" as a means to achieve professionalism and uniformity in the administration of child welfare services, including in particular Standards of Excellence for Adoption Services. CWLA adheres to and supports ICWA in its Standards of Excellence. CWLA's Standards also influence and improve child welfare practices throughout North America, as well as informing the Standards of Accreditation for agency administration,

management, and service delivery for accredited child welfare agencies.

The Children's Defense Fund ("CDF") is a non-profit child advocacy organization that has worked relentlessly for four decades to ensure a level playing field for all children. CDF champions policies, programs and practices that lift children out of poverty, ensure their access to health care, offer them quality early childhood experiences and a quality education, protect children from abuse, neglect, and delinquency, and keep children safely out of foster care and the juvenile justice system. CDF provides a strong voice for all children and pays particular attention to the needs of poor children, minority children, and children with disabilities. One of CDF's earliest reports, *Children Without Homes: An Examination of Public Responsibility to Children in Out of Home Care*, identified, among other findings, a pervasive, implicit anti-family bias that often shapes decisions about children at risk of removal from their families or in out-of-home care. CDF works collaboratively at the federal, state and local levels to achieve policy and practice reforms to help keep these children safely with their families, and only when that is not possible, to place them in foster care. Even then, CDF strives (i) to ensure that foster care is provided in the most family-like setting and within reasonable proximity to their biological families and community, (ii) to seek safe reunification with the support of needed services for the child and the parents in a timely fashion, and (iii) only when reunification is not appropriate, to move children promptly to new permanent families through adoption or kinship guardianship.

The Donaldson Adoption Institute is a national not-for-profit organization whose mission is to provide leadership that improves adoption laws, policies, and practices in order to better the lives of everyone touched by adoption. To achieve those goals, the Institute conducts and synthesizes research, offers education to inform public opinion, promotes ethical practices and legal reforms, and works to translate policy into action.

The North American Council on Adoptable Children ("NACAC") was founded in 1974 by adoptive parents to meet the needs of children waiting for permanent families and the families who adopt them. NACAC promotes and supports permanent families for children and youth in the United States and Canada who are in state care, especially those in foster care and those who have special needs. Dedicated to the belief that every child deserves a permanent, loving family, NACAC's activities include advocacy, parent leadership development, adoption support, and education and information sharing. NACAC produces conferences, position statements, articles, and publications highlighting best practices in child welfare and adoption. NACAC fully supports ICWA and several of its position statements highlight the practices codified in ICWA as best practices for all children and youth.

Voice for Adoption (VFA) is a membership advocacy organization with a network of grassroots adoption and child welfare advocates throughout the country. VFA develops and advocates for improved adoption policies, and its members recruit and support adoptive families. Recognized as a national leader in special-needs adoption, VFA works closely

with federal and state legislators to make a difference in the lives of the 104,000 children in foster care who are waiting to be adopted and the families who adopt children from foster care. Voice for Adoption is concerned about preserving best practices for children as outlined in ICWA.

The Annie E. Casey Foundation is a private charitable organization dedicated to improving the well-being of our nation's most vulnerable children. The Foundation collaborates with public agencies, nonprofit organizations, policymakers and community leaders to develop innovative, cost-effective solutions for challenging social problems. For more than 60 years, the Foundation has supported programs and initiatives to secure and sustain lifelong family connections for children and youth in foster care, and for 36 years, the Foundation provided direct foster care and related child welfare services in New England and Maryland. This work, along with the Foundation's system improvement initiatives, direct consulting work with numerous public child welfare agencies, and grantmaking, have contributed to significant and measurable transformations in these systems and helped to improve outcomes for children and their families. Federal policies such as the Indian Child Welfare Act set substantive and procedural standards that are central to the Foundation's goal of ensuring that child welfare systems operate effectively and efficiently to strengthen families.

Black Administrators in Child Welfare, Inc. ("BACW") is the nation's oldest member organization devoted to ensuring that the racial, ethnic and cultural experiences of Black children and families

are recognized, understood and served by child welfare agencies. BACW's membership consists of individuals and agencies, both public and private, that provide services to all children and families engaged in the child welfare system. Since its inception in 1972, BACW has advanced best practices in child welfare with an intentional focus on meeting the unique needs of American children of African heritage. BACW advocates, conducts research, and publishes resources to further its mission. Over the past forty years, BACW has refined its role to emphasize the autonomy and integrity of safe families, including birth families, extended kin and adoptive homes in communities of color. BACW supports both the letter and the spirit of the Indian Child Welfare Act in its role to preserve families of Native American heritage. BACW is an inclusive organization that collaborates with persons, organizations and governmental units that share its vision of eradicating racial, ethnic, cultural and social bias in the child welfare system.

The Children and Family Justice Center ("CFJC") is a comprehensive children's law center that has represented young people in conflict with the law and advocated for policy change for over 20 years. The CFJC is committed to keeping children with their families absent a compelling state interest justifying their removal. In addition to its direct representation of youth and families in matters relating to delinquency and crime, immigration or asylum, and fair sentencing practices, the CFJC also collaborates with community members and other advocacy organizations to develop fair and effective strategies for systemic reform.

The Chicago-based Family Defense Center is the first-of-its-kind, independent legal advocacy organization addressing the fundamental right of families to remain together or to reunite in the face of intervention by state and local child protection agencies. The Center's mission is to advocate for justice for families in the child welfare system. The Center has become a nationally recognized leader for its award-winning legal services program encompassing direct legal services, education and training, and systemic advocacy. The Center serves parents, youth, family members, and child care workers of all ages, races, genders, sexual orientations, and income levels, and it represents many disadvantaged and minority parents, including Native American parents who, but for the Center's willingness to assist them, would lack resources to mount a challenge to government and private actions that curtail their access to their children. Based on its experience representing these parents, the Center endorses the importance of maintaining the protections of the Indian Child Welfare Act as a best practice in the child welfare field.

The First Focus Campaign for Children is a bipartisan organization advocating for legislative change in Congress to ensure children and families are a priority in federal policy and budget decisions. The organization is dedicated to the long-term goal of substantially reducing the number of children entering foster care, and working to ensure that the existing system of care protects children and adequately meets the needs of families in the child welfare system. First Focus is especially concerned with increasing federal investment in prevention

efforts and providing support and services for at-risk families to ensure that they avoid entering the child welfare system in the first place. First Focus fully supports the Indian Child Welfare Act, and views it as a model for child welfare principles and policies in the field.

Foster Care Alumni of America ("FCAA"), a national organization of alumni of the foster care system, was formed in 2000. Its vision is to ensure a high quality of life for those in and from foster care through the collective voice of alumni. FCAA hopes to erase the differences in opportunities and outcomes that exist for people in and from foster care compared to those who have not experienced foster care. FCAA also believes that alumni of foster care possess an expertise about foster care that is not available anywhere else. Alumni's experiences have taught that, when best practices, standards and laws like those embodied in ICWA are not followed, the lives of children in foster care can be drastically affected, in some cases allowing children to linger in the foster care system until they age out. Upon leaving foster care, children may no longer have any connection to their birth family, and may also lack alternative permanent connections that could help and support them. FCAA supports ICWA and other policies, practices, and laws that ensure that young people in foster care are afforded the best opportunity to grow and lead successful lives.

FosterClub is the national network of young people in foster care. FosterClub's mission is to lead the efforts of young people in and from foster care to become connected, educated, inspired and represented so that they can realize their personal

potential and contribute to a better life for their peers. For over a decade, FosterClub has provided foster youth a place to turn for advice, information and hope. With over 32,000 members, FosterClub elevates the collective voice of young people who have experienced foster care, including Native American youth involved with the child welfare system. FosterClub's young leaders engage and inform policymakers, practitioners, and the public about the critical needs of children and youth through first-hand stories about what life is like in the foster care system.

The National Alliance of Children's Trust and Prevention Funds is a national leader in preventing child abuse and neglect and strengthening families. Its mission includes efforts to promote and support a system of services, laws, practices and attitudes that supports families by enabling them to provide their children with safe, healthy, and nurturing childhoods. It is the only national organization that supports all aspects of the work of state children's trust and prevention funds, which are special funds established in state law, funded by a variety of state revenue sources or donations, and dedicated to child welfare programs. The Alliance provides training, technical assistance, and publications that support effective child welfare practices throughout the Country, including a 14-hour online training in how to help families build protective factors that have been shown to increase the health and well-being of children and families.

The National Association of Public Child Welfare Administrators ("NAPCWA") is an affiliate of the American Public Human Services Association,

established in 1983 to represent the nation's public child welfare administrators. Its membership includes executives from state and local public agencies, the territories, and the District of Columbia. NAPCWA's mission is to pursue excellence in public child welfare by supporting state and local leaders, informing policymakers, and working with its partners to drive innovative, effective, and efficient approaches that promote child, youth, and family well being. Its policy work is guided by its approach to translating and disseminating new knowledge and best practices on the administration and delivery of child welfare services, including the Indian Child Welfare Act (ICWA). NAPCWA is regarded as a national leader in programs and policies to prevent children from coming into care in the first place, and to find alternative solutions for parents to safely parent and nurture their children in their own homes. NAPCWA supports ICWA practices.

The National Association of Social Workers ("NASW") is the largest professional membership organization of social workers in the world, representing 140,000 social workers, with chapters located in all fifty states, the District of Columbia, the Virgin Islands, Guam, and Puerto Rico. Since its inception in 1955, NASW has worked to develop and maintain high standards of professional practice, to advance sound social work policies, and to strengthen and unify the social work profession. Its activities include promulgating professional standards, enforcing the *NASW Code of Ethics*, conducting research and publishing materials relevant to the profession, and providing continuing education.

NASW offers specialty credentials for social workers such as the Certified Advanced Children, Youth, and Family Social Worker (C-ACYFSW) and the Certified Children, Youth, and Family Social Worker (C-CYFSW), and it publishes the *NASW Standards for Social Work Practice in Child Welfare*. NASW's policy statement, Foster Care and Adoption, supports "a child welfare policy designed to provide the best care for all children ***, permanency for children involved in the child welfare system ***, respect for the civil rights of parents and children, regardless of their race, ethnicity, language, capabilities, religion, sexual orientation, gender identity, geographic location, or socioeconomic status ***, a transparent system ***," and "efforts to maintain a child's identity and his or her ethnic heritage in all services and placement actions." SOCIAL WORK SPEAKS 148, 151-152 (NASW, 2012, 9th ed.).

The National Court Appointed Special Advocate Association ("National CASA") is the national membership organization for over 950 state and local CASA and volunteer guardian ad litem programs. Its mission is to support court-appointed volunteer advocacy so that every abused or neglected child can be safe, establish permanence, and have the opportunity to thrive. CASA and guardian ad litem volunteers have advocated for the best interests of over two million children involved in both state and tribal courts due to abuse or neglect. The National CASA Association believes that adherence to the provisions of the Indian Child Welfare Act is always in the best interests of a child involved in any dependency proceeding. For that reason, all CASA and guardian ad litem advocates receive training in

how to monitor compliance with the Act and ensure that the child's cultural and familial needs are fully considered by the court.

The National Crittenton Foundation ("TNCF") was established in 1883 and is the umbrella organization for 27 agencies providing youth services in 31 States and the District of Columbia. Agencies provide a range of services to girls, young women, and families involved with the child welfare system. For more than a century, Crittenton agencies have been deeply committed to meeting the needs of children for safe, nurturing and stable homes and relationships. TNCF and Crittenton agencies depend on ICWA to guide this work in a way that respects and honors tribal affiliation and heritage while ensuring the lifelong well being of children in the child welfare system.