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 FOR AMICI CURIAE ADULT PRE-ICWA INDIAN ADOPTEES SUPPORTING BIRTH FATHER AND THE CHEROKEE NATION

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INTEREST OF AMICI CURIAE

Amici are Indians who were adopted as children before the passage of the Indian Child Welfare Act and raised in families outside their Tribes.[1] Amici are thus personally familiar with the serious long-term social and psychological consequences of child placement

[1] Pursuant to Rule 37.3(a), letters from the parties consenting to the filing of this brief are on file with the Clerk of the Court. No counsel for a party authored this brief in whole or in part, and no person other than the amici curiae or their counsel made any monetary contribution to the preparation or submission of this brief.

practices that fail to appreciate how important recognition of an Indian child's tribal heritage and participation in his or her tribal community can be to the child's sense of identity. Amici urge this Court not to retrench on the important progress that has been made in recent decades for Indian children, but rather to affirm the importance of giving tribal heritage substantial weight in determining the best interests of an Indian child.

A full list of amici is provided as an Appendix to this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

In enacting ICWA, Congress sought "'to protect the rights of the Indian child *as an Indian* and the rights of the Indian community and tribe in retaining its children in its society.'" *Mississippi Band of Choctaw Indians* v. *Holyfield*, 490 U.S. 30, 37 (1989) (quoting H.R. Rep. No. 95-1386, at 23 (1978)) (emphasis added). The statute achieves that goal "by establishing 'a [f]ederal policy that, where possible, an Indian child should remain in the Indian community.'" *Holyfield*, 490 U.S. at 37 (quoting H.R. Rep. No. 95-1386, at 23). While one focus of ICWA was to halt harmful practices that led to the involuntary placement of Indian children in non-Indian foster and adoptive homes, *see* 25 U.S.C. § 1901(4), ICWA also sought to prevent *voluntary* adoptive placements that separated Indian children from their Tribes without due consideration of the effect that separation would have on both the children and the Tribes. As this Court stated in *Holyfield*:

> Congress' concern over the placement of Indian children in non-Indian homes was based in part on evidence of the detrimental impact on the

> children themselves of such placements outside their culture. Congress determined to subject such placements to the ICWA's jurisdictional and other provisions, *even in cases where the parents consented to an adoption, because of concerns going beyond the wishes of individual parents*.

Holyfield, 490 U.S. at 49-50 (emphasis added and footnote omitted). Among other things, those concerns reflected a congressional finding that "[r]emoval of Indian children from their cultural setting seriously impacts … long-term tribal survival and has damaging social and psychological impact on many individual Indian children." *Id.* (internal quotation marks omitted); *see also* 25 U.S.C. § 1901(3) (recognizing "that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children").

Petitioners, the guardian ad litem, and their amici discount to the point of nonexistence both this congressional purpose and the importance to children of preserving knowledge of and ties to their tribal communities. They downplay or ignore the damaging social and psychological consequences for many Indian adoptees of being adopted out of the Indian community and raised in non-Indian cultural environments. Indeed, they go so far as to suggest that maintaining an Indian child's connection to her Tribe is not a factor that should be considered when evaluating her best interests, or even that such a connection is *adverse* to her best interests. *See, e.g.*, Guardian Br. 31 ("While the best interests standard fully protected Baby Girl[] … ICWA simply changed the subject and protected her not at all."); Br. of Nat'l Council for Adoption in Supp. of Cert. 3 (characterizing "a child's status as an Indian tribe member or child of a tribe member" as a "compet-

ing factor" to other factors that properly define the "best interests of the child").

These troubling assertions are flatly contrary to the text and purposes of ICWA, which is "based on the fundamental assumption that it is in the Indian child's best interest that its relationship to the tribe be protected." *Holyfield*, 490 U.S. at 50 n.24; *see also* Pet. App. 34a ("Where an Indian child's best interests are at stake, [the] inquiry into that child's best interests must also account for his or her status as an Indian, and therefore, [a court] must also inquire into whether the placement is in the best interests of the *Indian child*."). This Court should reject them.

Amici were placed for adoption before the protections of ICWA were available to Indian children, and as a result are uniquely positioned to comment on the importance of considering the maintenance of tribal ties as a significant factor among the many factors that together determine the best interests of a particular child. Although amici were adopted under a range of circumstances and have since had a broad variety of life experiences, they share one critical experience in common: Having been adopted out of their birth families' Tribes as young children, they learned of their Indian identity later in life, long after their formative years. For all, the process of recovering their tribal heritage and connecting with the greater Indian community has been transformative, and self-identification as Indian is now a critical aspect of their lives and the lives of their families. Many are now active in their Tribes and the greater Indian community, and take a personal and abiding interest in the health and perpetuation of those communities. The stories recounted in this brief are meant to provide this Court with the perspective—otherwise lacking in this case—of the children ICWA was enacted to protect.

ARGUMENT

I. ICWA Is Designed To Prevent The Separation Of Indian Children From The Indian Community Through Various Child Placement Practices, Including Voluntary Adoption

ICWA's central concern is the simultaneous protection of Indian Tribes and the best interests of Indian children. Advancing this directive requires courts adjudicating child custody proceedings to "'protect the rights of the Indian child *as an Indian* and the rights of the Indian community and tribe in retaining its children in its society.'" *Mississippi Band of Choctaw Indians* v. *Holyfield*, 490 U.S. 30, 37 (1989) (quoting H.R. Rep. No. 95-1386, at 23 (1978)) (emphasis added); *see also* 25 U.S.C. § 1902 (Congress "declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.").

As this Court observed in *Holyfield*, ICWA was addressed to an array of "abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes." 490 U.S. at 32. Surveying ICWA's legislative history, *Holyfield* recognized the toll such practices exacted on Indian children. *Id.* at 33 (reviewing evidence of high rates of adoption of Indians into non-Indian homes and testimony regarding the "serious adjust-

ment problems encountered by such children during adolescence, as well as the impact of the adoptions on Indian parents" (footnote omitted)). The Court likewise remarked on the considerable evidence presented to Congress concerning the destructive impact such practices had on Indian Tribes. *Id.* at 34 (quoting Chief Calvin Isaac's testimony that "the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their People"). Recognizing its trust responsibility and accompanying power over Indian affairs, Congress established through ICWA "'a Federal policy that, where possible, an Indian child should remain in the Indian community.'" *Id.* at 37 (quoting H.R. Rep. No. 95-1386, at 23).

Disregarding ICWA's legislative history and this Court's decision in *Holyfield*, petitioners and their supporters assert or imply that ICWA's purposes do not extend to issues raised by *voluntary* adoptions that separate Indian children from their tribal communities. *See* Pet. Br. 16-17 (asserting that "ICWA's core purpose to prevent the involuntary removal of Indian children and dissolution of Indian families and culture is not implicated at all" in this case because it involves "the adoption of an Indian child [that was] voluntarily and lawfully initiated" by Birth Mother); Guardian Br. 55 ("When interpreted correctly, ICWA serves the legitimate purpose of preventing the involuntary removal of Indian children from their families and, in cases involving the custody of Indian children domiciled on tribal land, ensuring the tribe's ability to exercise its sovereignty over the custody proceedings."). That view should be rejected.

One purpose of ICWA was, of course, to halt practices that led to the involuntary removal of children

from their biological parents and placement in foster and adoptive homes. *See* 25 U.S.C. § 1901(4) (noting that "an alarmingly high percentage of Indian families [were] broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies" prior to ICWA's passage). But ICWA also responded to voluntary adoption decisions that separated Indian children from their Tribes without due consideration of the effect that separation would have on both.

By its terms, ICWA applies to "child custody proceedings" involving an "Indian child," including proceedings involving "*any* adoptive placement of an Indian child under State law." 25 U.S.C. §§ 1901(1), (4), 1915(a) (emphasis added). The statute defines "Indian child" 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." *Id.* § 1903(4). The fact "[t]hat ICWA governs custody proceedings concerning children who are *eligible* for tribal membership makes apparent that Congress extended ICWA's protections to children who have not yet formed their Indian identities," including children who might be placed for adoption voluntarily. Birth Father Br. 34.

Further, as this Court noted in *Holyfield*, Congress decided to subject such placements to ICWA's jurisdictional and other provisions, even in cases where a parent consented to an adoption, because of concerns extending beyond the wishes of individual parents. 490 U.S. at 50; *see also* Hollinger, *Adoption Law and Practice* § 15.01 (1988 & Supp. 2012) ("Much of the Act concerns the removal and placement of children over the objection of a biological parent or parents. Nonethe-

less, the Act also addresses either expressly, or by implication, the voluntary placement of children by their parent(s) in foster care or with prospective adopters, and the consent by a parent to the termination of parental rights or to an adoption."). Those concerns reflected, among other things, a congressional finding that "[r]emoval of Indian children from their cultural setting seriously impacts … long-term tribal survival and has damaging social and psychological impact on many individual Indian children." *Holyfield*, 490 U.S. at 50 (internal quotation marks omitted); *see also* 25 U.S.C. § 1901(3) (recognizing "that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children").

II. ICWA Protects The Best Interests Of Indian Children By Establishing Procedural And Substantive Safeguards That Properly Protect Their Connection To Indian Tribes

The lodestar in all child-welfare proceedings is the best interests of the child. As the House Report on ICWA noted, however, quoting a decision of this Court, that "legal principle is vague, at best," and judges "'may find it difficult, in utilizing vague standards like 'the best interests of the child,' to avoid decisions resting on subjective values.'" H.R. Rep. No. 95-1386, at 19 (quoting *Smith* v. *Organization of Foster Families for Equality & Reform*, 431 U.S. 820, 835 n.36 (1977)). Congress thus supplemented the general standard with particular content applicable to the special case of Indian children when it formulated the substantive and procedural safeguards imposed by ICWA.

First, ICWA limits the power of state courts over Indian child placement cases, directing many child custody disputes involving Indian children to tribal courts.

See 25 U.S.C. § 1911; *see also Holyfield*, 490 U.S. at 45 (noting that ICWA's "purpose was, in part, to make clear that in certain situations the state courts did *not* have jurisdiction over child custody proceedings").

Second, even when the custody of an Indian child is adjudicated in state court, ICWA requires that the court's analysis of the child's best interests take into account the child's connection to an Indian Tribe. ICWA's notice and appointment of counsel provisions ensure that state-court decisions are informed by the perspective of Indian parents and Tribes. 25 U.S.C. § 1912(a), (b). ICWA also seeks to prevent improvident termination of parental rights in cases involving an Indian child by requiring that the party seeking termination "satisfy the court that active efforts have been made to provide remedial services" to the Indian family and that such efforts have "proved unsuccessful." *Id.* § 1912(d). ICWA further circumscribes the discretion of state courts by requiring that terminations of parental rights be "supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that 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).[2] Moreover, as the South Carolina Supreme

[2] ICWA provides heightened protections designed to preserve the child's relationship with her biological family and her tribe even when such preservation efforts may thwart the desires of would-be adoptive parents. Thus, in cases in which an Indian parent voluntarily consents to the termination of parental rights and an adoption, ICWA provides that such consent "may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption." 25 U.S.C. § 1913(c). Even a final decree of adoption may be vacated for up to two years upon a showing that the consent was obtained through fraud or duress. *Id.* § 1913(d).

Court recognized, ICWA requires that a state court's "inquiry into that child's best interests must also account for his or her status as an Indian, and therefore … must also inquire into whether the placement is in the best interests of *the Indian child*." Pet. App. 34a (citing 25 U.S.C. § 1902); *see also id.* at 35a ("Baby Girl, as an Indian child, has a strong interest in retaining ties to her cultural heritage.").

Further, in cases in which an Indian child is adopted, ICWA ensures that a state court's discretion in discerning the child's best interests is cabined by the articulated national policy favoring the placement of Indian children in Indian families and tribal settings. Specifically, ICWA establishes that "[i]n any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families." 25 U.S.C. § 1915(a). Together with ICWA's other protections, Section 1915(a)'s placement presumption "establish[es] a Federal policy that, where possible, an Indian child should remain in the Indian community." H.R. Rep. No. 95-1386, at 23. At the same time, as the House Report noted, Section 1915(a) "is not to be read as precluding the placement of an Indian child with a non-Indian family." *Id.* The "good cause" exception provides state courts flexibility to accommodate other interests in appropriate cases. That flexibility is essential to ICWA: Section 1915(a) creates "a strong presumption that will control in the vast majority of cases," while providing a "safety valve" for cases with compelling reasons to depart from those preferences, and thus "ensures that the ultimate custody decision reflects the child's best interests." Cherokee Nation Br. 19.

ICWA's insistence that Indian children should, if possible, be placed with their biological families or other members of their Tribe reflects Congress's determination that such placements would spare many Indian adoptees the potentially damaging social and psychological consequences of being adopted out of the Indian community and raised in non-Indian cultural environments. H.R. Rep. No. 95-1386, at 9 (noting that "most Indian children in placement or in institutions have to cope with the problems of adjusting to a social and cultural environment much different than their own"); *Holyfield*, 490 U.S. at 49-50 ("Congress' concern over the placement of Indian children in non-Indian homes was based in part on evidence of the detrimental impact on the children themselves of such placements outside their culture.").

Petitioners and their supporters seek to downplay these concerns. They go so far as to suggest that maintaining an Indian child's connection to her Tribe is not a factor that should be considered when evaluating her best interests, or even that considering the interests of the birth parent and the Tribe "*preclude[s]* an honest assessment" of the child's best interests. Child Advocacy Organizations Br. 15; *see supra* p. 3.[3] Such arguments, however, fail to recognize (or are actively hostile to) a basic premise of ICWA: The preservation of

[3] To be clear, amici do not suggest that otherwise inappropriate child placements or adoptions ought to be consummated, to the detriment of the child, simply because a birth parent is Indian. Nothing in ICWA requires that result. Amici only stress that in their experience—which is consistent with Congress's determinations in enacting ICWA—the recognition and acceptance of a child's tribal heritage during her formative years is highly significant to the development of the child's identity, and therefore entitled to substantial weight in determining whether a particular placement serves the overall best interests of the child.

an Indian child's connection to her Tribe generally *is* in her best interests. Affording state courts unbridled discretion to impose their own views of what is in an Indian child's best interests will fail to protect those interests as Congress, after considerable study, understood them.

Here, the South Carolina Supreme Court interpreted ICWA consistently with the statute's text and purposes and with this Court's decision in *Holyfield*. First, the court correctly rejected petitioners' argument that "any efforts to rehabilitate Father would be futile," because Section 1912(d) plainly "requires that remedial services be offered to address any parenting issues to prevent the breakup of the Indian family," and because Birth Father's steadfast determination to be a parent to Baby Girl throughout the litigation belied any futility argument. Pet. App. 26a-27a. Second, the court properly recognized that Adoptive Couple failed to "prov[e] that Father's custody of Baby Girl would result in serious emotional or physical harm to her beyond a reasonable doubt" as required by Section 1912(f). *Id.* at 29a. To the contrary, Father "and his family have created a safe, loving, and appropriate home for her." *Id.* at 32a. Third, the court correctly held that placement with Birth Father is in Baby Girl's best interests. As the court noted, Adoptive Parents failed to present any evidence that "Baby Girl would not be safe, loved, and cared for if raised by Father and his family." *Id.* at 37a. Moreover, the court found that "in transferring custody to Father and his family, Baby Girl's familial and tribal ties may be established and maintained in furtherance of the clear purpose of the ICWA." *Id.* Finally, the court correctly held that, even if Birth Father's rights were terminated, Adoptive Couple had failed to demonstrate good cause for deviat-

ing from the placement preferences in Section 1915(a), which Birth Mother sought to subvert "[f]rom the outset" by seeking "placement in a non-Indian home." *Id.* at 38a.

The South Carolina Supreme Court's recognition that protecting the best interests of an Indian child requires accounting for her status as an Indian is consistent with the views of numerous state courts and commentators. *See, e.g.*, *In re Esther V.*, 248 P.3d 863, 876 (N.M. 2011) ("While an abuse and neglect proceeding is designed to protect the best interests of the child and the rights of the parents, ICWA goes further by protecting the unique relationship between a tribe and its children. That relationship is not to be severed casually or without good cause."); *In re C.H.*, 997 P.2d 776, 782 (Mont. 2000) ("ICWA expresses the presumption that it is in an Indian child's best interests to be placed in conformance with the preferences" of Section 1915(a)); *In re Custody of S.E.G.*, 521 N.W.2d 357, 362 (Minn. 1994) ("ICWA appears to create a presumption that placement of Indian children within the preferences of the Act is in the best interests of Indian children."); *Navajo Nation* v. *Arizona Dep't of Econ. Sec.*, 284 P.3d 29, 34-35 (Ariz. Ct. App. 2012), as amended (Sept. 5, 2012) ("[A]bsent other factors amounting to good cause to deviate from ICWA preferences, keeping a Native American child with his or her community and tribe is presumed to be in the best interests of the child as well as the tribe and community."); *see also* Jones et al., *The Indian Child Welfare Act Handbook* 4 (2008) (in passing ICWA, "Congress clearly felt that maintaining Native American children in homes that reflect the children's unique native cultures and values would be in their 'best interest' and the best interest of Indian tribes").

III. AMICI'S PRE-ICWA ADOPTION EXPERIENCES DEMONSTRATE THAT MAINTAINING TRIBAL TIES SERVES THE BEST INTERESTS OF AN INDIAN CHILD

Amici were placed for adoption before 1978, when ICWA began to change the way child placement decisions for Indian children were rendered. Some amici enjoyed happy childhoods with their adoptive families; others did not. That range of experiences is not unique to Indian adoptees. What distinguishes amici's experiences is instead a shared sense of alienation and dislocation occasioned by being Indian children raised in families and communities apart from their Tribes. This experience was common to those with happy and unhappy adoptive family situations alike. Even loving and attentive adoptive parents may sincerely believe that they must, in the words of one adoptive parent, "kill the Indian to save the man."

Amici at different points in their lives learned of their tribal affiliations and worked to recover connections to their Tribes and the greater American Indian community. That often difficult process affected the self-discovery and fulfillment that ordinarily occur naturally for children raised in families and communities with particular cultural, social, and spiritual traditions. For each amicus, the process of recovering his or her tribal roots has been transformative but bittersweet.

1. Several of the amici were voluntarily placed for adoption by their birth mothers. The experience of Diane Tells His Name is exemplary. Having learned at the age of 37 that she was voluntarily placed for adoption by her birth mother as an infant, Tells His Name avidly pursued her birth family's roots. She is now a member of both the Daughters of the American Revolution on her birth father's side, and the Oglala Sioux

Tribe on her birth mother's. But long before she discovered both that she was adopted and that she was Indian, she had felt inexplicably drawn to Indian culture, an interest that her otherwise loving and supportive adoptive parents actively discouraged. Tells His Name speculates that they did this because they knew she was Indian and worried about what a recognition of that identity would mean for her and for their family.

When she discovered that her birth mother was Indian, Tells His Name began to immerse herself in her Lakota (Sioux) heritage, which is now at the center of her and her family's life. She underwent a naming ceremony and became an enrolled member of the Oglala Sioux Tribe. She has served as a foster parent for Indian children, and her two daughters and eight grandchildren are all now enrolled members of her Tribe. She credits their tribal enrollment with much of her children and grandchildren's academic success and personal growth. When her adoptive parents died, however, she was written out of their will because, in their words, she had gone "back to the blankets"—a reference to her embrace of her Indian heritage. Tells His Name explains that she was sustained through this rejection by her new relationship with her birth mother (with whom she had reconnected), and by her new involvement in tribal life.

The experiences of other amici follow a similar pattern. Tonya May Deal, a member of the Pyramid Lake Paiute Tribe, was born in 1952 on an Indian reservation in Nevada to a mother aged 14 and father aged 18. She was placed for adoption by her birth mother and adopted by a non-Indian family in Salt Lake City, Utah, when she was two-and-a-half years old. Throughout her childhood, her adoptive family taught her to reject her Indian heritage; her adoptive mother used to joke

that if she misbehaved, the family would "leave you on the reservation." After feeling a sense of shame for many years about her heritage, Deal enrolled in the Pyramid Lake Tribe five years ago, and has become proud of the history of her people, who were hard-working farmers—a contrast with the image of her family and people as depicted by her adoptive parents. Deal feels that she was "robbed" of her childhood, and that she lost out on the opportunity to learn as a young woman about the religious and artistic traditions of her Tribe. Her adult son and daughter are both now members of her Tribe, and her son's children are being taught about the traditions of their Tribe.

Tara (Pretends Eagle) Weber, a member of the Standing Rock Lakota Tribe, was born in 1969 in Cleveland, Ohio. Her birth mother, who was 18 years old when Weber was born, grew up on a reservation in North Dakota and ended up in Cleveland through a government relocation program. Weber's understanding is that her mother voluntarily placed her for adoption, and she was adopted by non-Indian parents who encouraged her to learn about her heritage and helped her become an enrolled member of her Tribe. Despite their supportive attitudes, Weber felt anxiety, depression, and shame as a child and young woman who was "never around anyone who looked like me" and who was often teased about her appearance. She felt an overwhelming sense that she did not belong, and that there was no one in her life "to show me who I was" and to teach her how to be "a Lakota girl."

At age 30, Weber moved to California to work for the National Indian Justice Center, in the hope that through working with Indians she would "find out who I was and where I came from." Her work led her to reconnect with her Tribe; indeed, she recounts that just

sitting in a room of Indians gave her a sense of ease and happiness. Weber has also reconnected with her birth family. Although her relationships with her birth mother and sisters have been painful and difficult at times, Weber describes them as "healing journeys in progress."

Meschelle Linjean was born to a seventeen-year-old Cherokee mother and adopted by a non-Indian family in 1970. Because she was raised by her adoptive parents in Cherokee country, she grew up near other Indians. Linjean's "peripheral exposure to Native culture" made her passingly familiar with Indian traditions and mores, but her adoption by non-Cherokee parents deprived her of a sense that she formed a genuine part of the Cherokee community. Thus, even though Linjean's adoptive father encouraged her to be proud of her Indian heritage, he was unable to provide her with the knowledge and understanding necessary to do so. Nor could Linjean's adoptive mother or stepmother (who was herself a Seneca Indian) bridge the gap between Linjean and the Cherokee Nation.

At age 20, Linjean began the process of finding her birth family and affiliating with her Tribe. Reconnecting with her birth Tribe after being raised outside the tribal community was a formidable process. As Linjean explains it, while she had long felt a diffuse kinship with other Indians, she "didn't know the customs, the language, the inside jokes, the ceremonies. I was aware that I was Indian, but I didn't know what I was supposed to do as an Indian." Soon after meeting her birth family, Linjean moved to the Cherokee Nation for a few years to be near her birth mother and her sisters. While there, she also took college courses in Cherokee language and culture; those courses were helpful, but they "could not substitute for the natural knowledge I

would have had if I had grown up within my culture." Linjean has also become an active participant in the community of "returning adoptees"—other Indians who were adopted into non-Indian homes. These fellow returning adoptees share Linjean's lifelong "sense of isolation, and of not belonging," and have assisted her in "becoming more complete."

2. Other amici were involuntarily removed from their birth families and adopted by non-Indians. They too felt a sense of alienation from their heritage, and spent many years as adults struggling to reconnect with their birth families.

After Leland Pacheco Morrill's birth mother died in 1968, when he was two years old, Morrill went to live with his grandmother. He was then removed from her custody and placed for adoption after he was injured in a fire. Morrill and his adopted Indian siblings were raised by a non-Indian Mormon family, principally in Canada and South Dakota, and were always the only non-white children in school. He was first exposed to Indian culture in college, and soon after recovered his Navajo heritage. When he reconnected with his grandparents, he was dismayed that he was unable to communicate with them because they spoke only Navajo. Nonetheless, his interest in his cultural heritage deepened as he grew older. Morrill gave up his job at the Federal Reserve Bank to pursue the traditional vocation of his birth father's family—silversmithing—and enrolled in the Navajo Nation. He now lives in California and is an active participant in tribal life. He believes, however, that no current, adult affiliation can adequately compensate him for the loss of a traditional upbringing and early education in the ways of his Tribe.

Similarly, Sandy White Hawk was born in 1953 on the Rosebud Reservation in South Dakota to Sioux birth parents. She was involuntarily removed from her birth parents by a social worker and placed with adoptive parents, who kept her away from her relatives and told her that her mother "only wanted you so she could have a welfare check and she could drink." In view of her adoptive parents' antipathy for Indians, White Hawk often felt as a child that she did not understand Indians or Indian culture. Her family eventually relocated to southern Wisconsin, where she spent most of her childhood feeling emotionally isolated from her adoptive family and their community. When she grew older, she reconnected with her mother's family and learned that her cousin Doris—who maintains a stable home and who helped raise several of White Hawk's other cousins whose parents were struggling—would have raised White Hawk, too, if White Hawk had not been removed by social workers.

3. Feelings of dislocation and alienation are not limited to Indian children adopted by non-Indian parents. Even adoption by a loving family affiliated with a different Tribe may well disrupt an Indian child's connection to her own tribal culture.

Patina Park was born in 1970 in Fargo, North Dakota. Her birth mother was white, and her birth father was a member of the Cheyenne River Sioux Tribe. Park's maternal grandparents were very unhappy that her birth father was Indian, and they pressured her mother to place her for adoption. About one month after her birth, Park was adopted by a non-Indian mother and a father who was an enrolled member of the Osage Nation. Park's adoptive parents were told by the agency that handled her adoption that the Cheyenne River

Sioux wanted nothing to do with her because she had mixed blood.

Park loved her adoptive parents, but she never felt any sense of community with Osage Indians. In her early 40s, she reconnected with her biological family, and learned for the first time that her paternal birth grandmother had wanted to raise her but was unable to track down Park's birth mother before the adoption. Park believes that if ICWA's notification procedures had been in place at the time of her birth, they would have ensured that she was raised within her Tribe. While she appreciates her current connection with the Indian community in Minneapolis, where she runs a direct services organization for Indians, she feels a profound sense of loss about having missed out on a childhood within her Tribe, and that loss has, in her words, left "a permanent hole in my soul."

* * *

These stories capture a few voices from among the thousands of Indian children who were placed in homes and communities outside their Tribes before ICWA checked the often unjustified outflow of Indian children from their birth families and tribal communities. Amici make no claim that their personal narratives tell the full story of all pre-ICWA Indian adoptees. Their stories, however, resonate with Congress's avowed intent to help secure the survival of Indian Tribes and the tribal identity of individual Indian children by ensuring that courts consider tribal affiliation when determining the best interests of every Indian child.

CONCLUSION

The judgment of the South Carolina Supreme Court should be affirmed.

Respectfully submitted.

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APPENDIX

APPENDIX

LIST OF AMICI CURIAE

Tonya May Deal, born in Nevada in 1952 and adopted in 1955, is enrolled in the Pyramid Lake Paiute Tribe.

Meschelle Linjean, born and adopted in Oklahoma in 1970, is enrolled in the Cherokee Nation.

Leland Pacheco Morrill, born in Arizona in 1966 and adopted in 1971, is enrolled in the Navajo Nation.

Patina Park, born and adopted in North Dakota in 1970, is in the process of enrolling in Cheyenne River Sioux Tribe.

Diane Tells His Name, born in Oklahoma in 1951 and adopted in 1952, is enrolled in the Oglala Sioux Tribe.

Tara (Pretends Eagle) Weber, born and adopted in Ohio in 1969, is enrolled in the Standing Rock Sioux Tribe.

Sandy White Hawk, born in South Dakota in 1953 and adopted in 1955, is enrolled in the Rosebud Sioux Tribe.