Nos. 21-376, 21-377, 21-378, 21-380

In The Supreme Court of the United States

DEB HAALAND, SECRETARY OF THE INTERIOR, ET AL.,
Petitioners,

v.

CHAD EVERET BRACKEEN, ET AL.

CHEROKEE NATION, ET AL.,
Petitioners,

v.

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TEXAS,
Petitioner,

v.

DEB HAALAND, SECRETARY OF THE INTERIOR, ET AL.

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DEB HAALAND, SECRETARY OF THE INTERIOR, ET AL.

On Writs Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR LOS ANGELES COUNTY AS *AMICUS CURIAE* SUPPORTING FEDERAL AND TRIBAL PETITIONERS AND CROSS-RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

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INTEREST OF *AMICUS CURIAE*

The County of Los Angeles, through its Department of Children and Family Services, promotes child safety and well-being by partnering with communities to strengthen families, keeping children at home whenever possible, and connecting them with stable, loving homes in times of need.[1] According to Census Bureau estimates, Los Angeles County is home to more than 163,000 American Indian and Alaska Native persons, more than any other county in the United States.[2]

The Indian Child Welfare Act (ICWA) is vital to promote the interests of Los Angeles County's Indian children. The ICWA was designed to preserve tribal identity and to protect Indian tribes and families whose ancestors were forcibly dispersed from their reservations.[3] Despite Los Angeles County's significant American Indian and Alaska Native population, the county does not have a single federally recognized Native American reservation within its borders.[4] If this

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[1] Website of the Los Angeles County Department of Children and Family Services, https://dcfs.lacounty.gov/ (last visited July 22, 2022).

[2] United States Census Bureau, 2020 Decennial Census, *Census Bureau Tables: Race All Counties within United States and Puerto Rico*, https://data.census.gov/cedsci/table?g=0100000US240500000&tid=DECENNIALPL2020.P1 (last visited June 27, 2022).

[3] 25 U.S.C. §§ 1901, 1902, 1915; Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38783 (June 14, 2016).

[4] See Northern California Indian Development Council, *County List of Tribal Nations in California*, https://www.ncidc.org/

Court finds the ICWA unconstitutional, the decision will have a dramatic impact on Los Angeles County and its duty to protect children and preserve familial ties. By this *amicus curiae* brief, Los Angeles County explains the impact of limiting the ICWA to only those Indian children living on or near Indian reservations.

SUMMARY

Congress' power to enact statutes that carry out its trust responsibility to Indian Tribes and their members is not limited to Indians living on or near reservations. (*United States v. Holliday*, 70 U.S. 407, 417-18 (1866).) Plaintiffs' arguments to the contrary have no support – neither in Congress' practice, nor in this Court's jurisprudence.

The purpose of the ICWA is to protect Indian tribes, whose members were forcibly dispersed from their reservations to urban areas, and Indian children, so they can preserve their tribal identities. Consistent with this Court's holding in *Morton v. Mancari*, 417 U.S. 535 (1974) – hiring preference for American Indians deemed constitutional because it applied only to members of federally recognized tribes, a political, not racial, classification – the ICWA's definition of "Indian child" and the child placement preferences, which also hinge on membership or eligibility for membership in

county-list-tribal-nations-california (last visited June 27, 2022); see also United States Environmental Protection Agency, *California Tribal Lands and Reservations Map*, https://www3.epa.gov/region9/air/maps/ca_tribe.html (last updated December 2, 2021).

federally recognized tribes, are political designations tethered to the federal recognition that Indian tribes are sovereign entities, free to make their own membership determinations that do not require living on or near tribal land.

Individual Petitioners and the State of Texas (Plaintiffs) challenge the constitutionality of the ICWA. Among their arguments is that the ICWA violates the Equal Protection Clause of the United States Constitution because the definition of "Indian child" and the child placement preferences are race-based and do not meet the political classification in *Morton v. Mancari*. Plaintiffs' arguments lack merit.

If, as Plaintiffs contend, *Morton v. Mancari* were limited to Indian children living on or near a reservation, the ICWA's purpose would be defeated in Los Angeles County, which is home to the largest American Indian and Alaska Native population of any county in the United States, but does not have a single federally recognized Native American reservation within its borders.

ARGUMENT

I. THE ICWA IS AN INTEGRAL PART OF CALIFORNIA'S JUVENILE DEPENDENCY SCHEME AND IS VITAL TO PROMOTE THE INTERESTS OF LOS ANGELES COUNTY'S INDIAN CHILDREN.

The purpose of California juvenile dependency law is "to provide protective services to the fullest extent

deemed necessary by the juvenile court . . . to insure that the rights or physical, mental or moral welfare of children are not violated or threatened by their present circumstances or environment." (Welf. & Inst. Code § 19; see also Seiser & Kumli, Seiser & Kumli On California Juvenile Courts Practice and Procedure § 2.62[2] (2022) ["The purpose of the dependency process is to protect abused or neglected children and those who are at risk of such abuse and neglect and to provide stable, permanent homes to those children if they cannot be returned to their home within a limited period of time."].)

"[T]he safety, protection, physical and emotional well-being of dependent children is the primary goal of the dependency system." (Seiser & Kumli, Seiser & Kumli On California Juvenile Courts Practice and Procedure § 2.11[1] (Matthew Bender 2017), citing Welf. & Inst. Code §§ 202, 300.2, 361(c)(1), 361.2(a), 361.3(a)(8), 366.21(e).) Equally important, provided "it can be done safely, is the public commitment to preserve families and safeguard parents' fundamental right to raise their children." (Seiser & Kumli, Seiser & Kumli On California Juvenile Courts Practice and Procedure § 2.11[2] (Matthew Bender 2017), citing Welf. & Inst. Code §§ 202, 300.2, 361.5(a).)

Consistent with these goals, the ICWA was enacted "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." (25 U.S.C. § 1902.)

In a dependency proceeding, "when a child is removed from parents and reunification services are ordered [for the parents], permanency planning services are concurrently implemented" so that "another permanent home will have already been planned for" if reunification efforts are unsuccessful. (Seiser & Kumli, Seiser & Kumli On California Juvenile Courts Practice and Procedure § 2.11[3] (Matthew Bender 2017).) It is important that these permanent homes have the capacity to address all of the child's unique needs.

To protect the unique interests of Indian tribes and families, if the matter involves an Indian child, there are additional requirements including placement preferences to promote familial and tribal preservation. (25 U.S.C. § 1901, § 1915; Seiser & Kumli, Seiser & Kumli On California Juvenile Courts Practice and Procedure § 2.125[1] (Matthew Bender 2017).) Thus, the ICWA not only protects Indian tribes and families, but furthers the purpose and goals of California's dependency scheme.

California embraces the ICWA and has established its own, more stringent, guidelines.[5] Senate Bill

[5] California is one of many states that has enacted all or part of ICWA into state law. (National Conference of State Legislatures, *State Statutes Related to the Indian Child Welfare Act* (Nov. 12, 2019), https://www.ncsl.org/research/human-services/

678, or Cal-ICWA, was passed in 2006 "codif[ying] the federal ICWA's requirements into California Welfare & Institutions code, Probate code and Family code[,]" and "creating further safeguards[.]" (ICWA Compliance Task Force *Report to the California Attorney General's Bureau of Children's Justice*, 6-7, 2017.)

Moreover, in 1989, Los Angeles County, through its Department of Children and Family Services (DCFS), created the American Indian Unit to provide county-wide vertical case management to ICWA-eligible children, as well as guidance and consultation to DCFS regional offices on cases and referrals involving American Indian and Alaska Native children and families. Consistent with the ICWA, when DCFS first receives a referral for an Indian child, the family is immediately connected to American Indian/Alaska Native service providers to promote family preservation through in-home services and community outreach.[6] If a juvenile dependency action involving an American Indian or Alaska Native family is initiated, the matter may be transferred to the American Indian Unit, as well as the juvenile courtroom designated to hear cases involving

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state-statutes-related-to-indian-child-welfare.aspx#:~:text=Six%20states%20(Iowa%2C%20Michigan%2C,child%22%20and%20the%20notification%20requirements).

[6] See DCFS Child Welfare Policy Website, *Adopting and Serving Children Under the Indian Child Welfare Act (ICWA),* http://policy.dcfs.lacounty.gov/Content/Indian_Child_Welfare_Ac.htm#ICWA (revised July 1, 2014). See also United American Indian Involvement, Inc. http://uaii.org (last visited August 4, 2022); UAII Seven Generations Child & Family Services, http://uaiisevengenerations.org (last visited August 4, 2022).

the ICWA.[7] These measures ensure not only ICWA compliance, but promote the purpose of California juvenile dependency law by involving Tribes to work in tandem with DCFS to address the unique needs of American Indian and Alaska Native children and families by providing culturally based services and interventions and strengthening cultural identity and connections.

A recent study showed improved reunification rates from 48% to 53% and increased rates of placement with extended family from 18% to 28%, when specialty state courts focused on ICWA compliance. (Capacity Building Center for Courts, *ICWA Baseline Measures Project Findings Report* 17 (2020), https://tinyurl.com/spa68nm.)

As indicated earlier, given the significant Native American population in Los Angeles County, it created the American Indian Unit to "provide[] culturally appropriate, case management services to American Indian children and families Countywide under the legal mandate of the [ICWA]."[8] Historically, the American

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[7] See DCFS Child Welfare Policy Website, *Adopting and Serving Children Under the Indian Child Welfare Act (ICWA),* http://policy.dcfs.lacounty.gov/Content/Indian_Child_Welfare_Ac.htm#ICWA (revised July 1, 2014). See also DCFS Child Welfare Policy Website, *Case Transfer Criteria and Procedures,* http://m.policy.dcfs.lacounty.gov/Src/Content/Case_Transfer_Criteria_P.htm#AI (revised July 29, 2015).

[8] Los Angeles County Department of Children and Family Services, *Specialized Programs, American Indian Unit,* https://dcfs.lacounty.gov/about/what-we-do/dcfs-specialized-programs/#:~:text=

Indian Unit has provided services to mostly children from the Navajo Nation, Choctaw Nation of Oklahoma and the Cherokee Nation of Oklahoma. Currently, the largest represented tribes in the American Indian Unit are the Navajo Nation (13%), the Muscogee (Creek) Nation of Oklahoma (10%), the Chickasaw Nation (9%), and the Choctaw Nation of Oklahoma (9%), all located in other states.[9]

II. THE HISTORY OF RELOCATION CONTRIBUTED TO THE ICWA'S NECESSITY, AND THEREFORE, THE PURPOSE OF THE ICWA WOULD BE DEFEATED IF IT WERE LIMITED TO INDIAN CHILDREN ON OR NEAR INDIAN LANDS.

The purpose of the ICWA would be defeated if it applied to Indian tribes operating only on or near a reservation because it would exclude residents of Los Angeles County, home to the largest American Indian and Alaska Native population of all counties in the United States, but without a single federally recognized Native American tribe within its borders.[10]

The%20American%20Indian%20Unit%20provides,Public%20Law%2095%2D608 (last visited July 22, 2022).

[9] This information was provided by the American Indian Unit of Los Angeles County's Department of Children and Family Services.

[10] United States Census Bureau, 2020 Decennial Census, *Census Bureau Tables: Race All Counties within United States and Puerto Rico*, https://data.census.gov/cedsci/table?g=0100000

"[T]he fact that many Indians live off-reservation is, in part, a result of past, now-repudiated Federal policies encouraging Indian assimilation with non-Indians and, in some cases, terminating Tribes outright." (Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38783 (June 14, 2016).) In 1887, Congress passed the Indian General Allotment Act, 24 Stat. 388, codified at 25 U.S.C. 331 (1887) (repealed), authorizing the United States to allot and sell Tribal lands to non-Indians and take the land out of trust status, often leading to "Tribal citizens dispersing from their reservations." (Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38783 (June 14, 2016).) As a result, almost two-thirds of the Indian land base passed out of Indian hands; the tribes relinquished about 86,000,000 acres. (Wilkinson & Biggs, *The Evolution of the Termination Policy* (1977) 5 Am. Indian L.Rev. 139, 142.)

During the "termination era" of the 1950s, "Congress passed a series of acts severing its trust relationship with more than 100 Tribes," who "lost not only their land base but also myriad Federal services. . . . , including education, health care, housing, and emergency welfare. *See Sioux Tribe of Indians v. United States*, 7 Cl. Ct. 468, 478 n. 8 (Cl. Ct. 1985) (describing

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US%240500000&tid=DECENNIALPL2020.P1 (last visited June 27, 2022).

See Northern California Indian Development Council, *County List of Tribal Nations in California*, https://www.ncidc.org/county-list-tribal-nations-california (last visited June 27, 2022); see also United States Environmental Protection Agency, *California Tribal Lands and Reservations Map*, https://www3.epa.gov/region9/air/maps/ca_tribe.html (last updated December 2, 2021).

the termination policy)." (Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38783 (June 14, 2016).) Without "these basic services, which often did not otherwise exist in rural Tribal communities, many Indians were forced to move to urban areas." (Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38783 (June 14, 2016).) Subsequently, in 1956, the Relocation Act (Act of Aug. 3, 1956, Public Law 84-959, 70 Stat. 986) was passed providing funds to young adult Indians to relocate from on or near a reservation to a selected urban center. (Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38783 (June 14, 2016).)

A December 1956 report published by the Association on American Indian Affairs, described the Relocation Program, conducted since 1952, as the Bureau of Indian Affairs (BIA) providing "financial assistance and limited social services to Indian individuals and families for permanent removal from reservations." (La Verne Madigan, *The American Indian Relocation Program*, at p. 3, Dec. 1956 (Association Report).) The report indicated that by July 1, 1956, over 12,000 American Indians left their reservations to move to cities and an additional 10,000 were expected to relocate by July 1, 1957. (*Ibid.*)

The BIA maintained relocation programs until the mid-1970s. (Blackhawk, *I Can Carry On From Here: The Relocation of American Indians to Los Angeles* (Autumn 1995) 11 Wicazo Sa Rev. 16, 18.) The Relocation Office in Los Angeles opened in 1951. (La Verne Madigan, *The American Indian Relocation Program*, at pp. 3-5, Dec. 1956 (Association Report).) In the ensuing

20 years, the City of Los Angeles became home to nearly 30,000 relocated individuals and/or families – close to three times more than any other city. (Blackhawk, *I Can Carry On From Here: The Relocation of American Indians to Los Angeles* (Autumn 1995) 11 Wicazo Sa Rev. 16-17.)

Even before the Relocation era, between 1900 and 1945, Los Angeles was a destination for American Indian migration and urbanization, resulting in significant numbers of American Indians moving off their reservations. (Nicolas G. Rosenthal, *Reimagining Indian Country: Native American Migration & Identity in Twentieth Century Los Angeles*, 34 (2012).) Harsh reservation life and the dispossession of Native land and resources led Indians to growing cities and towns. (Nicolas G. Rosenthal, *Reimagining Indian Country: Native American Migration & Identity in Twentieth Century Los Angeles*, 38-39 with fn. to Shipek, *Pushed into the Rocks*, 55-56; Hyer, "*We Are Not Savages,*" 129-90.)

Consequently, Southern California became a site for Indian migratory wage labor, but given how difficult the work could be, many Indian people ventured away from tribal communities in search of better work and living conditions. (Nicolas G. Rosenthal, *Reimagining Indian Country: Native American Migration & Identity in Twentieth Century Los Angeles*, 43, 46-48.)

"Los Angeles exerted a strong pull on Indian migrants, with its rapid economic expansion and its proximity to Indian communities throughout the American

Southwest. Native people from Southern California reservations saw new opportunities in the urban areas and farmlands of the burgeoning region." (Nicolas G. Rosenthal, *Reimagining Indian Country: Native American Migration & Identity in Twentieth Century Los Angeles*, 50.) During the early decades of the twentieth century, Indians from outside California also moved to Los Angeles, and their numbers increased gradually in the years up to World War II. (Nicolas G. Rosenthal, *Reimagining Indian Country: Native American Migration & Identity in Twentieth Century Los Angeles*, 53.)

Indian presence in Los Angeles increased during the war due, in part, to the Sherman Institute, a federal boarding school in Riverside, California, founded by the Office of Indian Affairs in 1902 as a government-run institution that emphasized "the Americanization of Native peoples[.]" (Nicolas G. Rosenthal, *Reimagining Indian Country: Native American Migration & Identity in Twentieth Century Los Angeles*, 65.)

"ICWA itself was enacted with Congress' awareness that many Indians live off-reservation. [Citation, fn. omitted.] The fact that an Indian does not live on a reservation is not evidence of disassociation with his or her Tribe." (Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38783 (June 14, 2016).) In fact, there was a very high rate of state agencies placing Indian children in urban communities in states without reservations. (Statement of Bertram Hirsch, Association on American Indian Affairs, 1974 Senate Hearings at 38.)

"[I]t is clear that 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[,]" namely that "[r]emoval of Indian children from their cultural setting seriously impacts a long-term survival and has damaging social and psychological impact on many individual Indian children. Senate Report [No. 95-597], at 52 [1977]." (*Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 49-50 (1989).)

"[A]pproximately 78% of American Indians live outside of Indian country. . . ." (Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38782-83 (June 14, 2016).) Approximately 71%, or 7 out of 10, American Indians and Alaska Natives live in urban areas. (Urban Indian Health Institute, *Urban Indian Health*, https://www.uihi.org/urban-indian-health/ (last visited June 8, 2022).)

Because of the historical backdrop, including now-repudiated federal relocation laws, Los Angeles County has the highest number of American Indian and Alaska Native persons of any county in the United

States, without a single federally-recognized Native American reservation within its borders.[11]

As such, Texas' complaints about the reach of the ICWA outside of Indian country intimates a myopic view that Indian people choose to live far from reservations and tribal lands, ignoring centuries of federal and state governmental policies of assimilation, termination, and relocation. (Brief for Petitioner the State of Texas, 46-47.) The reality is American Indian and Alaska Native peoples live on many different types of land across the United States as a result of dispossession of tribal land and policies enforcing relocation.

In enacting the ICWA, Congress found "that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural

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[11] See Northern California Indian Development Council, *County List of Tribal Nations in California*, https://www.ncidc.org/county-list-tribal-nations-california (last visited June 27, 2022); see also United States Environmental Protection Agency, *California Tribal Lands and Reservations Map*, https://www3.epa.gov/region9/air/maps/ca_tribe.html (last updated December 2, 2021).

and social standards prevailing in Indian communities and families." (25 U.S.C. § 1901(4)-(5).)

In the years leading to the ICWA's passage, studies found that "Native American children were approximately six to seven times as likely as non-native children to be placed in foster care or adoptive homes;[12] and, [a]pproximately 25-35% of all Native American children were removed from their homes and placed in foster care or adoptive homes, or institutions such as boarding schools."[13] And, in California, "Native American children were more than eight times as likely as non-native children to be placed in adoptive homes [and] over 90% of California Native American children subject to adoption were placed in non-native homes[.]" (ICWA Compliance Task Force *Report to the California Attorney General's Bureau of Children's Justice*, 5, 2017.)

Though compliance with the ICWA has helped in lowering these statistics, there continues to be a disproportionate number of Native American children removed from parental custody. (National Center for Juvenile Justice, *Disproportionality Rates for Children of Color in Foster Care Dashboard (2010-2020),* https://www.ncjj.org/AFCARS/Disproportionality_Dashboard.asp?selYear=2020&selState=California&selDisplay=2 (last visited July 22, 2022).) As such, ICWA and its purpose remain

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[12] Sherwin Broadhead, et al., *Report on Federal, State, and Tribal Jurisdiction: Final Report to the American Indian Policy Review Commission* 81-85 (U.S. Gov't Printing Office 1976).

[13] H.R. Rep. 95-1386, 1978 U.S.C.C.A.N. 7530, 7531.

vital to promote the stability and security of Indian tribes and families. (25 U.S.C. § 1902.) Importantly, noncompliance with the ICWA, "contributes to the disproportionality and disparity that Native Americans in foster care experience." (Lead Article: Racial Bias In American Foster Care: The National Debate, 97 Marq. L. Rev. 215.)

"The overriding duty of our Federal Government to deal fairly with Indians wherever located has been recognized by this Court on many occasions. See, *e.g., Seminole Nation v. United States*, 316 U.S. 286, 296 (1942); *Board of County Comm'rs v. Seber*, 318 U.S. 705 (1943)." *Morton v. Ruiz*, 415 U.S. 199, 236 (1974).) Limiting the ICWA's application to Indian children living on or near reservations offends this duty as well as the wellbeing of Indian children.

III. THE ICWA'S DEFINITION OF "INDIAN CHILD" AND ITS CHILD PLACEMENT PREFERENCES ARE POLITICAL DESIGNATIONS AND PROMOTE SELF-GOVERNANCE BY SOVEREIGN TRIBAL NATIONS.

In *United States v. Holliday*, this Court rejected the argument that application of a federal law affecting Indian persons had to be limited to Indian land. Rather, the federal government's authority to pass laws relating to Native Americans is derived from the Constitution and power to enact treaties with sovereign nations. (*United States v. Holliday*, 70 U.S. 407 (1866).)

Similarly, in *Morton v. Mancari*, this Court held the preference for hiring qualified Indians was "granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion. In the sense that there is no other group of people favored in this manner, the legal status of the BIA is truly *sui generis*. . . ." (*Id.* at p. 554, n. 24.) The preference for hiring Indians within the BIA did not constitute "racial discrimination" or a "racial" preference, but was political in nature because it applied only to members of "federally recognized" tribes. (*Id*. at pp. 548-551, 553-554, n. 24.)

Thus, Plaintiffs' argument that the ICWA violates the Equal Protection Clause of the United States Constitution because the ICWA's definition of "Indian child" and its child placement preferences are race-based, is without merit. (Brief for Individual Petitioners 26; Brief for Petitioner the State of Texas 44-46.) These claims are contrary to this Court's prior holdings.

The *Mancari* Court stated the purpose of the Indian hiring preference at issue was "to give Indians a greater participation in their own self-government; to further the Government's trust obligation toward the Indian tribes; and to reduce the negative effect of having non-Indians administer matters that affect Indian tribal life." (*Morton v. Mancari, supra*, 417 U.S. at pp. 537-538, 541-542.)

Like the Indian preference in *Morton v. Mancari*, the ICWA's definition of "Indian child" is political because it hinges on tribal membership or eligibility for tribal membership. (25 U.S.C. § 1903(4).) The Congressional findings pertaining to the ICWA state, ". . . . that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe[.]" (25 U.S.C. § 1901.) An "Indian child" to whom the ICWA applies is defined as an unmarried child who "is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4).) Similarly, the ICWA's child placement preferences were devised to promote self-government. In enacting the ICWA, Congress "assumed the responsibility for the protection and preservation of Indian tribes and their resources[.]" (25 U.S.C. § 1901(2).)

Plaintiffs' reliance on *Rice v. Cayetano*, 528 U.S. 495 (2000), to argue that the ICWA makes a racial classification, is misplaced. (Brief for Individual Petitioners 28-29, 31-32; Brief for Petitioner the State of Texas 42, 46.) Indeed, the *Rice v. Cayetano* holding reenforces Congress' power to enact laws affecting members of federally recognized tribes as citizens of sovereign nations.

In *Rice v. Cayetano*, 528 U.S. 495 (2000), the petitioner was a citizen of Hawaii whose application to register to vote in the elections for the Office of Hawaiian Affairs (OHA) trustees was denied because he was not a "native Hawaiian" or "Hawaiian" as defined by

statute. (*Id.* at p. 510.) The State of Hawaii justified its voting law restriction by comparing it to "cases allowing the differential treatment of certain members of Indian tribes." (*Rice v. Cayetano, supra*, 528 U.S. p. 518.) This Court disagreed, stating, "If a non-Indian lacks a right to vote in tribal elections, it is for the reason that such elections are the internal affair of a quasi-sovereign. The OHA elections, by contrast, are the affair of the State of Hawaii. OHA is a state agency, established by the State Constitution, responsible for the administration of state laws and obligations." (*Rice v. Cayetano*, *supra*, 528 U.S. p. 520.) This Court concluded that because OHA trustee elections are elections of the State, they are governed by the Fifteenth Amendment. (*Rice v. Cayetano, supra*, 528 U.S. p. 522.)

Unlike Hawaii's voting law, the ICWA is a federal law that applies to children who are members of a federally recognized Indian tribe or who are eligible for membership and have a parent who is a tribe member. (25 U.S.C. § 1903(4).) Congress enacted the ICWA, in part, because "States . . . have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." (25 U.S.C. § 1901(5).) "[A]n estimated 25 to 35 percent of all Indian children had been separated from their families and placed in adoptive homes, foster care, or institutions. H.R. Rep. No. 95-1386, at 9 (1978), *reprinted in* 1978 U.S.C.C.A.N. 7530, 7531. Although the crisis flowed from multiple causes, Congress found that nontribal public and

private agencies had played a significant role, and that state agencies and courts had often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. 25 U.S.C. 1901(4)-(5)." (Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38779 (June 14, 2016).)

CONCLUSION

Limiting the *Morton v. Mancari* holding to members of tribes living on or near Indian lands frustrates the purpose of the ICWA, which was designed to protect Indian tribes and families. Because of now repudiated federal law and policies, like relocation, Los Angeles County is home to the largest American Indian and Alaska Native population of any county in the United States, yet does not have a single federally recognized Native American reservation within its borders. Los Angeles County's Indian children should not be excluded from the ICWA.

Further, ICWA's definition of "Indian child" hinges on tribal membership – the child's or the parent's – and thus is a political, not a racial, classification. Likewise, ICWA's placement preferences promote self-government of Indian tribes and their children as well as the welfare of Indian children by fostering cultural identity and connections. Thus, the ICWA is vital to Los

Angeles' child-welfare scheme in protecting our Indian children.

Respectfully submitted,

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