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, BIRTH FATHER, AND THE CHEROKEE NATION,
Respondents.

On Writ of Certiorari to the South Carolina Supreme Court

BRIEF OF *AMICI CURIAE* NATIONAL COUNCIL FOR ADOPTION IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

The Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901-63, applies to state custody proceedings involving an Indian child. A dozen state courts of last resort are openly and intractably divided on two critical questions involving the administration of ICWA in thousands of custody disputes each year:

1. Whether a non-custodial parent can invoke ICWA to block an adoption voluntarily and lawfully initiated by a non-Indian parent under state law.

2. Whether ICWA defines "parent" in 25 U.S.C. § 1903(9) to include an unwed biological father who has not complied with state law rules to attain legal status as a parent.

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INTEREST OF *AMICUS CURIAE* [1]

The National Council For Adoption (NCFA), founded in 1980 is an adoption advocacy nonprofit that promotes a culture of adoption through education, research, and legislative action. NCFA is an authoritative voice for adoption, passionately committed to the belief that every child deserves to thrive in a nurturing, permanent family. We serve children, birthparents, adoptive families, adult adoptees, adoption agencies, adoption professionals, U.S. and foreign governments, policy makers, media, and the general public as the authoritative voice for adoption throughout the United States. NCFA has over 30 years of experience providing guidance, educating on best practices, and serving many thousands of children and families. With regards to domestic infant adoption, NCFA is especially knowledgeable as the only source that continues to count domestic adoptions on the national level. Further, since 2001 NCFA has trained more than 20,000 on how to properly counsel expectant parents on the option of adoption and created a curriculum many use to educate their communities on this issue. As a leading voice on adoption, NCFA believes its special expertise and experience regarding adoption laws, practices, and outcomes place it in a special position to inform the Court about the importance of the concerns in this case, including the need for laws that allow

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Letters from the parties consenting to the filing of this brief have been filed with the Clerk of the Court.

individual children's best interests to be pursued and the need for practitioners to have a clear understanding of when, how, and to whom to apply the Indian Child Welfare Act.

SUMMARY OF ARGUMENT

All children, including those subject to the Indian Child Welfare Act, require legal systems and practices that can serve the best interests of that particular child and help ensure their right to a permanent, loving family. In order to ensure child welfare practitioners and other participants in the adoption process are able to pursue the best interests of every child, they must have guidance on when, how, and to whom to apply the Indian Child Welfare Act. Children, biological and adoptive parents, and others impacted by adoption must be advised by practitioners on reasonable expectations of outcomes for a child in order to provide adequate, nurturing care to a child.

ICWA's implementation has been varied amongst states and tribes. Specifically, there is not a clear national understanding of whether ICWA applies when a Non-Indian parent voluntarily places a child for adoption and there is not a clear understanding of the definition of parent under ICWA with respect to unwed fathers. State courts' varied implementations of ICWA make its meaning unclear and make it difficult for practitioners to know how to properly implement and educate all those involved in and impacted by the adoption process. When this particular law's meaning is unclear, outcomes for children become unstable and unpredictable, putting at risk a child's right to permanent, loving family that can provide developmentally necessary healthy attachment through consistent caretakers. National Council

For Adoption advocates that when answering the two questions presented in this case the court should determine what is developmentally necessary for a child to succeed in life, what rights a child has to a successful future, and whether the Indian Child Welfare Act as it is currently put into practice is capable of allowing a child's best interests and their opportunity for a successful future to be pursued.

ARGUMENT

I. EVERY CHILD SHOULD HAVE THE RIGHT TO A DECISION MADE IN THE BEST INTERESTS OF THAT PARTICULAR CHILD

Although historically, children's rights were often couched in terms of parental rights, it can be reasonably presumed that the right to grow up safe, provided for, and cared for could reasonably considered among the rights of life and liberty that belong to any American. *See e.g.*, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158 (1944). In the United States, acting in the "best interest of the child" is a universally accepted state standard when determining child custody decisions, including decisions regarding placing a child in a family for adoption. This standard dates back hundreds of years and is undisputed in its usefulness in pursuing the liberty interests of a child to the safety, healthy, and appropriate development that comes within consistent and appropriate care. This universally accepted standard should always be the ruling priority by any court deciding a child's placement outcome.

A variety of factors may be considered in weighing the best interests of a child. State courts may

list suggested interests for consideration differently, but they consistently consider elements regarding a child's safety, physical health, and appropriate physical, mental, and social development. Every child deserves decisions made in their particular interests. Very reasonable and effective standards are typically used to determine whether a child has been or will be able to thrive in an environment. The safety of the environment, the health of the child, the ability of caretakers to provide for and be physically and emotionally available are all excellent indicators of whether a home will be best for a child. Further indicators might include finding a family of similar race, cultural experiences, or even the urban or suburban environment a child is accustomed to. While all these and many other variables ought to be reviewed it is important that these interests always be reviewed through the lens of that particular child's needs and experiences.

Baby Girl and all children have a right to parents who will act on their behalf. In order to be considered a parent with legal protection, a parent must fulfill their obligation to act on a child's behalf. "Parents who faithfully discharge their parental obligations with assiduity and to the full extent of their means and abilities are entitled to the custody of their children. Parental rights, however, are not absolute and are not to be unduly exalted and enforced to the detriment of the child's welfare and happiness. The right of parentage is not an absolute right of property, but is in the nature of a trust reposed in them, and is subject to their correlative duty to protect and care for the child. The law secures their parental right only so long as they shall promptly recognize and discharge their corresponding obligations. As the child owes allegiance to the government of the

country of its birth, it is entitled to the protection of that government, which, as *parens patriae*, must consult its welfare, comfort, and interests in regulating its custody during its minority." *In re Adoption of Anderson*, 235 Minn. 192, 200 (Minn. 1951) (citing *Purinton v. Jamrock*, 195 Mass. 187, 80 N.E. 802, 18 L.R.A. (n.S.) 926).

Because parental rights are secured only so long as a parent fulfills the obligation of the trust relationship between the parent and the child and because both a parent and the government have an obligation to protect a child's welfare, comfort, and interest during the time of a child's minority, the legislature has implemented certain mandates, including those mandates reflected in the ICWA. 25 U.S.C. § 1901. The ICWA limits application by defining "Indian child" as any unmarried minor who either is a member of an Indian tribe or "is the biological child of a member of an Indian tribe" and "eligible for membership". *Id.* § 1903(4). The ICWA further limits the term "parent" as "any biological parent or parents of an Indian child," but specifically excludes "the unwed father where paternity has not been acknowledged or established." *Id.* § 1903(9). Consistent, with the law protecting the best interests of all children, the ICWA recognizes that a biological father who does not "establish" or "acknowledge" paternity is not fulfilling their duty in trust to protect and care for the minor child and does not obtain protection of parental rights under law. Thus, if there is neither an "establishment" nor "acknowledgment" of paternity, an unwed father is excluded from application of the ICWA. *Id.* § 1903(9).

The ICWA does not set forth its own definition of "establish" or "acknowledge", rather, like in many

matters to pertaining to the family law, it is left to the individual states to determine the mechanism to "establish" or "acknowledge" paternity. *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979) (quoting *In re Burris*, 136 U.S. 586, 593-94 (1890)). To establish has been defined under law to "make stable or firm; to fix in permanence and regularity; to settle or secure on a firm basis, to settle firmly or to fix unalterably." *Wells Lamont Corp. v. Bowles*, 149 F.2d 364, 266 (1945). Thus, to establish paternity is to have the parent-child relationship fixed unalterably under law, or to have a court order permanently recognizing the parent and child relationship, or to put simply, an adjudication of paternity. Here, there was no adjudication of paternity prior to the time biological father was mandated to act under South Carolina law.

The term "acknowledgement" or "acknowledgment of paternity" in the context of paternity is a term of art established by the Uniform Parentage Act of 1973. The Uniform Parentage Act, was adopted by many states, prior to the adoption of the ICWA. The Uniform Parentage Act of 1973, under the §4, proposed that states recognize a presumption of paternity under the following circumstances:

> [When] he acknowledges his paternity of the child in a writing filed with [the appropriate court or Vital Statistics Bureau]. If another man is presumed under this section to be the child's father, acknowledgement may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

Uniform Parentage Act of 1973, §4. An acknowledgement of paternity, at that time created a presumption that an individual was the father, which protected his rights under law. While adoption of the Uniform

Parentage Act and the subsequent Uniform Parentage Act, was updated in 2000 and 2002 to reflect, among other suggestions, the federal law mandate that the states develop and utilize an "acknowledgment of paternity" to allow for the collection of child support for minor children. In 1996, pursuant to the Personal Opportunity and Work Responsibility Reconciliation Act, states were mandated to streamline the legal process for paternity establishment and required a state form for voluntary paternity acknowledgement. Under 42 U.S.C. 666(a)(5)(c)(iv) states are mandated to utilize a paternity acknowledgement form.

> Use of paternity acknowledgment affidavit. – Such procedures must require the State to develop and use an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit specified by the Secretary under section 452(a)(7) for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State according to its procedures.

42 U.S.C. 666(a)(5)(c)(iv). Thus, an "acknowledgment of paternity" remains a term of art in the context of establishing paternity.

South Carolina, in complying with the mandate under 42 U.S.C. 666(a)(5)(c)(iv) allows the parents to acknowledge paternity in a writing under certain and specific circumstances that acts as an adjudication under law. S.C. Code § 63-17-50. The acknowledgment of paternity creates a rebuttable presumption of the putative father's paternity except that a verified voluntary acknowledgment of paternity executed after January 1, 1998, creates a conclusive presump-

tion of the putative father's paternity subject to the provisions of Section 63-17-50. S.C. Code § 63-17-60 (a)(4).

In the present circumstances the South Carolina Supreme Court recognizes that the biological father did not either establish paternity under South Carolina law prior to the time he was mandated to act, or acknowledge paternity in a formal writing under S.C. Code § 63-17-50 prior to the time period in which he was mandated to act to create a presumption of paternity. However, the South Carolina Supreme Court determined that the ICWA "does not explicitly set forth a procedure for an unwed father to acknowledge or establish paternity," the birth father met the Act's definition of "parent" because he had "acknowledg[ed] his paternity through the pursuit of court proceedings as soon as he realized Baby Girl had been placed up for adoption and establish[ed] his paternity through DNA testing." Pet.App.21a-22a. The South Carolina Supreme Court erred in determining that the biological father "acknowledged" his paternity and his rights to parent a child that was unknown to him were legally protected by the ICWA by simply filing an untimely paternity proceeding without meeting the requirements under S.C. Code § 63-17-50.

In this case, and in the many thousands of child welfare cases that take place each year, many individuals are impacted by a child's placement. However, no individual is more impacted by this key decision than the minor child. The court's decision below overlooked the typically trusted best interests of the child standard allowing the ICWA to be improperly invoked solely based on genetic connection to a tribe, without an adjudication or acknowledge-

ment of paternity. Brief for Petitioner at 16, *Adoptive Couple v. Baby Girl*, No. 12. Baby Girl's 3/256 Cherokee blood connection to a tribe through the biology of a father who had not taken the legal steps necessary to protect his paternal rights, trumped the best interests of the minor child. This determination essentially ignores the rights and protections to which the minor child is entitled, exalts the rights of biology over the protections afforded the minor child under law and reduces the child to the chattel or property of a biological parent, as opposed to the beneficiary of a trust relationship between the parent and the minor child which is upheld so long as the biological parent fulfills his or her legal obligations. See, *In re Adoption of Anderson*, 235 Minn. 192, 200 (Minn. 1951) (citing *Purinton v. Jamrock*, 195 Mass. 187, 80 N.E. 802, 18 L.R.A. (n.S.) 926). The removal of Baby Girl's liberty interest based solely on race is a violation of equal protection.

It is "inherently unequal" to make separate considerations of what is in a child's best interest solely because of their race. *Brown v. Bd. Of Education*, 347 U.S. 483, 495 (1954). The 14th amendment serves, in part, to do away with prioritizing race in cases of child custody, because classifying persons according to their race was "more likely to reflect racial prejudice than legitimate public concerns." *Palmore v. Sidote*, 466 U.S. 429, 432, (1984), *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 272 (1979). "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943). Furthermore, one cannot use culture as a proxy for race. *Rice v. Cayetano*, 528 U.S. 495, 517 (2000). Here, the South Carolina Supreme

Court explicitly recognizes that the biological father would fail under South Carolina law, but for the minor child being eligible for enrollment in the tribe. Brief for Petitioner at 16, *Adoptive Couple v. Baby Girl*, No. 12. The determination is couched as one of alleged "political affiliation", rather than race. However, here, unlike *Holyfield*, the minor child has not resided on the reservation and has no connection to the tribe, except based upon an untimely determination of paternity. The child's only connection to the tribe is based upon a 3/256th blood quantum determined after the biological father's right to contest the adoption proceeding had extinguished. Thus, the biological father is allowed to "bootstrap" himself into a position to establish parental rights solely based upon the minor child's eligibility for enrollment in the tribe, which has no other connection, except one of race. Here, like *Cayetano*, the determination of rights are not based upon "political affiliation", but are solely and improperly based upon race.

To protect all minor children, the law should be clarified that state law pertaining to the "establishment" and "acknowledgment of paternity" must be followed, as the ICWA unequivocally and specifically excludes as a parent, "the unwed father where paternity has not been acknowledged or established." *Id.* § 1903(9). Where there has been an establishment of paternity or an "acknowledgment of paternity" under state law of an individual who otherwise qualifies as a parent under the ICWA of a child that qualifies as an Indian child under the ICWA, the legal protections afforded the biological father under the ICWA would apply. Without guidance on the definition of "acknowledgment" under the ICWA, proposed adoptive parents and biological mothers and fathers are left without the necessary clarity to understand their

rights, and most importantly, more minor children will be subject to the trauma of removal from a home where the child is securely attached. Without guidance the government fails to provide minor children with the "protection of that government, which, as *parens patriae*, must consult its welfare, comfort, and interests in regulating its custody during its minority." *Purinton v. Jamrock*, 195 Mass. 187, 80 N.E. 802, 18 L.R.A. (n.S.) 926.

II. CONTINUITY OF CARE IS ESSENTIAL TO A CHILD'S DEVELOPMENTAL NEEDS

The adoption community widely agrees that a child has a right to grow up in a loving, permanent family. *Mission*, NATIONAL COUNCIL FOR ADOPTION, https://www.adoptioncouncil.org/who-we-are/mission.html (last visited Oct. 15, 2012); *Mission & Values*, DAVE THOMAS FOUNDATION FOR ADOPTION, http://www.davethomasfoundation.org/who-we-are/mission-and-values/ (last visited Oct. 16, 2012); *Who We Are*, CONGRESSIONAL COALITION ON ADOPTION INSTITUTE, http://www.ccainstitute.org/who-we-are/aboutus.html (last visited Oct. 16, 2012); *The Joint Council Mission*, JOINT COUNCIL ON INTERNATIONAL CHILDREN'S SERVICES, http://www.jointcouncil.org/about/mission/ (last visited Feb. 20, 2013). The need for family continuity isn't just what feels right or what will be more comfortable for children though. It is a developmental necessity substantiated by extensive scientific evidence. Consistent caretakers are developmentally necessary and removal from a loving family can be detrimental to a child's whole development.

A child can develop an attachment relationship with any adult who on a continuing, day-to-day basis, through interaction, companionship, interplay, and

mutuality, fulfills the child's psychological needs for a parent, as well as the child's physical needs. Joseph Goldstein et al., BEYOND THE BEST INTERESTS OF THE CHILD 27 (2d ed. 1979), 98; *see also*, *From Neurons to Neighborhoods: The Science of Early Childhood Development*, NAT'L RESEARCH COUNCIL & INST. OF MEDICINE 234 (Jack P. Shonkoff & Deborah A. Phillips, Eds., 2000) ("[The c]riteria for identification of attachment figures . . . [include] provision of physical and emotional care, continuity or consistency in the child's life, and emotional investment in the child."). Furthermore, it has been found to be the *quality* and *nature* of the interaction between parent and child, rather than any biological or legal connection, that creates and sustains these attachment relationships. Ana H. Marty, et al., *Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver*, 175 EARLY CHILD DEV. & CARE 271, 273 (2005).

Attachment with familiar, trusted adults is necessary to healthy, holistic development. Early childhood development, and more specifically healthy brain development, relies heavily on child and caretaker relationships. Regular exchange in relationship between young children and trusted caretakers is fundamental to the wiring of the brain. *Three Core Concepts in Early Development: Serve & Return Interaction Shapes Brain Circuitry*, CENTER ON THE DEVELOPING CHILD HARVARD UNIVERSITY, http://developingchild.harvard.edu/index.php?cID=429 (last visited Oct. 15, 2012). Removal from safe and trusted caretakers can slow development and cause negative physical impacts common to trauma and can lead to toxic stress in a child. *Three Core Concepts in Early Development: Toxic Stress Derails Healthy Development*, CENTER ON THE DEVELOPING CHILD HARVARD

UNIVERSITY, http://developingchild.harvard.edu/resources/multimedia/videos/three_core_concepts/toxic_stress/ (last visited Oct. 15, 2012). While immediate action can generally be taken to respond to concerns of safety or provision for a child's needs, the trauma of breaking a secure attachment is not so quickly repaired and the normal brain development that ought to take place at the age the trauma is incurred can often be delayed or never reach its full potential. This is particularly true during years of early development when the brain is still developing. Physical health, cognition, social skills, and emotional competence can all face long term detriment when attachment is broken down and the secure, trusted caretaker is no longer present to model skills and behaviors which are mirrored by the child.

In this case, the secure attachment of 27 month old Baby Girl to Adoptive Parents was broken to return her to her biological father who had rejected her before birth and failed to show interest in her until past the period the state would generally consider him a legal parent, in large part because a child needs the safety, security, and developmental support he had failed to provide. However, ICWA was interpreted here to trump the child's needs for continued secure attachment. Instead of supporting continued positive development, a traumatic removal took place at a key developmental age for Baby Girl. When Congress enacted ICWA, their intent was to support tribal sovereignty and connection by helping ensure children weren't removed from what was familiar to them and when removal was necessary it was to a similar environment. Instead, ICWA is implemented in some cases to traumatize children by forcing them into completely unknown environments, traumatizing them by removal from the only family

they'd ever felt a connection with and imposing the developmental delays that come with the traumatic removal from a secure attachment.

III. THE INDIAN CHILD WELFARE ACT SHOULD NOT DISPLACE THE BEST INTERESTS OF THE CHILD

Despite Congress's declaration that "it is the policy of this Nation to protect the best interests of Indian children," its passage of ICWA has, instead, caused the [subjugation] of the best interests of the child in favor of the tribe. Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1902. The "best interests of the child" standard has been the cornerstone of child custody issues and allows judges to examine and balance a number of factors to ensure that placement is in the best interests of the child.

In disrupted adoption cases, attachment between the child and adoptive parents is one factor courts typically heavily emphasize. The significance of attachment on the neurological and cognitive development of a child has been scientifically proven and many courts evaluate the attachment between a child and caregiver to reach a decision that is in the best interests of the child. *See, e.g.*, In re C.A.B., 4 A.3d 890 (D.C. Ct. App. 2010) (discussing the attachment between a child and foster parents during the best interests of the child evaluation).

Despite the scientific evidence proving the necessity of attachment for child development and, it's importance in determining whether placement is in the best interests of the child, ICWA at times allows the interests of the tribe to trump the best interest of the child. In application, ICWA can permit the rejection of adoption petitions in cases that would nor-

mally be approved simply because a child is eligible for membership in a tribe. Indian Child Welfare Act of 1978, 25 U.S.C § 1903.

In this case, the South Carolina Supreme Court admitted that under state law Father's consent to the adoption was unnecessary and, under normal circumstances, the adoption would have been approved, guaranteeing Baby's Girl permanency with her adoptive parents. Brief for Petitioner at 16, *Adoptive Couple v. Baby Girl*, No. 12. But, because Baby Girl is eligible for tribal membership and is the biological daughter of a member of the Tribe, the lower court deviated from the traditional state standards considered to be in the best interests of the child.

Permitting the rights of the tribe to trump the best interests of the child is often explained in terms of the tribal identity. Native Americans argue that a child's identity is linked to the broader sense of belonging to the "whole." Barbara Ann Atwood, *Children, Tribes and States: Adoption and Custody Conflicts Over American Indian Children* 238-239 (2010). Instead of focusing on the Anglo-American preference for individualism, Native Americans are taught from an early age that tribal survival is paramount. Barbara Ann Atwood, *Children, Tribes and States: Adoption and Custody Conflicts Over American Indian Children* 238-239 (2010). As a result, attachment theory, which focuses on the individual relationship between the child and caretaker, is deemed inapplicable to Indian children. Barbara Ann Atwood, *Children, Tribes and States: Adoption and Custody Conflicts Over American Indian Children* 239 (2010). In other words, membership in the collective replaces the need for emotional attachment between a child and caretaker. This view was bol-

stered by the Montana Supreme Court, which stated that "ICWA expresses the presumption that it is in an Indian child's best interests to be placed in accordance with the statutory preferences. To allow emotional bonding—a normal and desirable outcome…—to constitute an 'extraordinary' emotional need would essentially negate the ICWA presumption." In re C.H., 997 P.2d 776 (Mont. 2000) (citations omitted). As a result, under this form of ICWA implementation the best interests of the particular child is often seen as subordinate to that of the tribe. This denies the scientific reality of secure attachment as a developmental necessity (as discussed above in Section II). It also fails to note that children who are part of healthy tribal cultures are generally in secure attachment relationships within that tribe and, in fact, the tribal presence has not replaced, but supplied the developmental necessity of consistent caretakers. However, taking a child outside a tribe from their securely attached environment is traumatic and a sudden, drastic change to tribal culture and it's unfamiliarity will be alarming. The value that might be provided to a child who grew up amongst the tribal culture may actually be traumatizing to an Indian child whose early experiences were different. When the interests of the tribe are granted superior status over that of the child, the child suffers.

This prioritizing of tribal rights is not uncommon. We see it in this case and in others like *In re S.E.G.* where the mother of three Native American siblings voluntarily placed her children in foster care. The children were split up and each child was placed in at least five different foster homes. After bouncing from home to home, they were reunited in the foster home of a non-Indian couple, E.C. and C.C. But, in compli-

ance with ICWA, the children were subsequently moved to Indian foster homes. When their Indian placements fell apart, the children always returned to the home of the non-Indian couple, who later petitioned for adoption. The Leech Lake Band of Chippewa intervened, arguing that the children should remain in the care of an Indian foster home. Instead of granting the adoption, which would have given the children the loving, permanent home they deserve, the court ruled in favor of the Tribe and ordered that the children remain in foster care. For at least a year, the children continued to languish in temporary care, which can cause or exacerbate attachment disorders, aggressive behavior, anxiety, and depression. Randall Kennedy, *Interracial Intimacies* 514-15 (2003).

The Indian Child Welfare Act should not act to the detriment of children by displacing the longstanding, more holistic best interests of the child standard. When ICWA is often beneficial, particularly if a child has been removed from a tribal culture, but this factor should be just that, a factor, and not a trump card to the many needs a child has to develop successfully and thrive in life.

CONCLUSION

In this particular case and in all cases where the Indian Child Welfare Act may intervene in a child's future, it should be the first priority to look through the lens of a particular child's needs and place them in an environment where that particular child can succeed. In addition to the more tangible and apparent interests of a child to be protected from danger and provided for physically, it is essential that a child be allowed to securely attach to a consistent caretaker and remain in that relationship to ensure

healthy development. Any breaks in such care are traumatic and should be avoided short of some significant intervening threat that endangers a child's wellbeing. The Indian Child Welfare Act when viewed on both state and national levels is unpredictable and prioritizes tribal connection over a child's wellbeing. This court should ensure that if the Indian Child Welfare Act is to intervene in a child's life it should never do so to the detriment of factors contributing to their wellbeing and healthy development.

The court should reverse this decision and remand it with instructions to evaluate the current best interests of this particular child subject to the mandates under South Carolina law and make a determination that will best ensure Baby Girl's future wellbeing and healthy development.

Respectfully submitted,

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