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.*, *Respondents.*

CHEROKEE NATION, *et al.*, *Petitioners,*
v.
CHAD EVERET BRACKEEN, *et al.*, *Respondents.*

STATE OF TEXAS, *Petitioner,*
v.
DEB HAALAND, SECRETARY OF THE INTERIOR, *et al.*,
Respondents.

CHAD EVERET BRACKEEN, *et al.*, *Petitioners,*
v.
DEB HAALAND, SECRETARY OF THE INTERIOR, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF 497 INDIAN TRIBES AND 62 TRIBAL AND INDIAN ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF FEDERAL AND TRIBAL DEFENDANTS

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STATEMENT OF INTEREST OF THE *AMICI CURIAE*[1]

Amici are federally recognized Indian Tribes, regional and national tribal organizations, and Indian non-profit organizations. The vital protections provided by the Indian Child Welfare Act (ICWA) to Indian children, Indian parents and families, and Indian Tribes are of significant importance to *Amici* and their members. Individually or collectively, all *Amici* either operate tribal child welfare programs and provide direct child welfare services to their members, or advocate on child welfare issues affecting American Indian and Alaska Native people, or both. *Amici* are critically interested in ensuring that ICWA continues to protect the best interests of Indian children, families, and Tribes.

Amici federally recognized Tribes are "Indian tribes" within the meaning that term is given in ICWA. 25 U.S.C. § 1903(8). Each is a separate and distinct tribal government, possessing the sovereign authority to adjudicate the best interests of its member children. Each operates, either by itself or through a tribal consortium, tribal child welfare programs that regularly work with state child welfare agencies and participate in state court child custody proceedings. Each has a direct and immediate interest in achieving the best outcomes for its member children, and knows from experience that the procedural and substantive rights secured by Congress in ICWA help achieve those best outcomes. And each knows that a challenge to ICWA threatens both the best interests of Indian children

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[1] The parties have consented to the filing of this *amicus curiae* brief. No counsel for either party authored this brief in whole or in part, and no person or entity other than *Amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

and the very existence of *Amici*. *Amici* are 497 sovereigns that have joined in a show of unity to protect the futures of their member children. A complete list of *Amici* federally recognized Tribes is included in Appendix A.

Amici Association on American Indian Affairs (AAIA), National Congress of American Indians (NCAI), National Indian Child Welfare Association (NICWA), and other organizations are national and regional organizations dedicated to the rights of American Indian and Alaska Native Tribes and individuals. *Amici* are tribal and Indian organizations that share a commitment to the well-being of Indian children and an understanding that ICWA is critical to achieving the best interests of children and supporting Indian families and Indian Tribes. A complete list of the 62 *Amici* organizations is included in Appendix A.

SUMMARY OF THE ARGUMENT

Congress enacted ICWA as an exercise of its well-established federal trust responsibility for Tribes and their members, legislating against the backdrop of a nationwide crisis: the wholesale removal of Indian children from their families by state and private child welfare agencies—often without due process—at rates far higher than those of non-Indian families. Congress carefully crafted ICWA to protect the legal rights of Indian children and parents and to incorporate important jurisdictional and political interests of Tribes in decisions concerning the welfare and placement of their children. *Amici* agree with Petitioners Secretary Deb Haaland *et al.* (Federal Defendants) and the Cherokee Nation *et al*. (Tribal Defendants) that ICWA is constitutional in its entirety and that the Fifth Circuit Court of Appeals erred to the extent it

held otherwise. In contrast, the interpretations advanced by the Brackeens, Cliffords, Librettis (Individual Plaintiffs), and the State of Texas find no support in centuries of established federal Indian law, have never been adopted by any other court, and would work profound harm on Indian children and Tribes.

Particularly concerning for undersigned Tribal *Amici* are Plaintiffs' equal protection arguments. Plaintiffs claim that ICWA's classifications are race-based because they include protections for children who are eligible for tribal membership and placement preferences that prioritize placement with Indian families. These arguments mischaracterize core aspects of tribal membership and its centrality in furthering tribal sovereignty, and disregard the importance of kinship and extended family to Indian children and their Tribes. Plaintiffs also seek to impose new, artificial limits on Congress's well-established power to legislate for Tribes and Indians by arguing that federal Indian legislation may be upheld in the face of an equal protection challenge *only* if it supports tribal self-governance for tribal members living "on or near a reservation." This fabricated, atextual standard finds no support in this Court's well established precedent. More fundamentally, this interpretation would gut not only ICWA and its protections for children, families, and Tribes, but also legislation applicable to the millions of Native people not living "on or near" a reservation, as well as to Tribes that lack reservations altogether—nearly half of all federally recognized Indian Tribes. This Court should uphold ICWA as an appropriate exercise of Congress's Indian affairs power and reject the argument that it constitutes invidious racial discrimination.

ARGUMENT

I. ICWA WAS ENACTED AS AN APPROPRIATE EXERCISE OF THE FEDERAL TRUST RESPONSIBILITY IN RESPONSE TO THE WIDESPREAD REMOVAL OF INDIAN CHILDREN FROM THEIR FAMILIES AND COMMUNITIES.

Since the founding of the United States, the federal government has recognized and protected the sovereign status of Tribes. This trust responsibility has long extended to Indian children, a responsibility initially recognized in treaties that provide federal services, education, and trust funds for their benefit. During the 19th century, however, shifts in federal Indian policy led to the forcible removal of Indian children from their families and communities and their placement first in military-style boarding schools, and later with non-Indian families for foster care and adoption. As painstakingly described in congressional testimony preceding the enactment of ICWA, these removals frequently occurred without due process protections, consideration of tribal child rearing practices, or consultation with with—or respect for the sovereignty of—tribal governments. Congressional testimony underscored the devastating impact of these removals on the children involved, as well as on their families and Tribes.

In passing ICWA, Congress established minimum federal standards for child welfare proceedings involving Indian children and families—standards that have proven crucial for the protection of Indian children and the preservation of their relationships with their families and Tribes—and have led to significant and demonstrable improvements in child welfare outcomes for Indian children.

A. Congress Enacted ICWA Against the Historical Backdrop of Disproportionate Removal of Native Children Compared to Non-Native Children.

Long before Congress enacted ICWA, the United States acknowledged and exercised its trust responsibility for the welfare of Indian children.[2] Beginning in the 19th century, federal policy shifted decisively towards compulsory assimilation of Indians, particularly Indian children, into mainstream society. Using funds provided in treaties intended to ensure the protection of Indian children, the federal government forcibly removed them from their families to military-style boarding schools. Bureau of Indian Affairs, Federal Indian Boarding School Initiative Investigative Report 43–44 (May 2022), https://tinyurl.com/2s48xf95. Federal, private, and state child welfare officials later collaborated to change state child welfare law and policy to facilitate these placements through the Indian Adoption Project, which systematically facilitated the adoption of Indian children, mostly to non-Indian families, to reduce reservation populations and spending on boarding schools. As Professor Margaret Jacobs has noted:

> The [Indian Adoption Project] gathered information on state policies and practices and then worked closely with state agencies to loosen structural restraints that impeded Indian adoptions. In fact, they promised

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[2] *See, e.g.*, Treaty with the Shawnee, art. VIII, May 10, 1854, 10 Stat. 1053 (establishing trust funds for Indian orphans); Treaty with the Cherokee, art. XXV, July 19, 1866 14 Stat. 799 (establishing institutions for the care of Indian orphans); H.R. REP. NO. 95–1386, at 9 (1978) (1978 House Report) (noting that federal boarding school programs "contribute[d] to the destruction of Indian family and community life").

> interested adoptive families that they could generate Indian children to be adopted . . . To further its aims, the [Project] actually lobbied for changes in state laws that would ease restrictions on the adoption of Indian children and undermine tribal jurisdiction.

Margaret D. Jacobs, *Remembering the "Forgotten Child": The American Indian Child Welfare Crisis of the 1960s and 1970s*, 37 Am. Indian Q. 136, 150 (2013).

In the 1970s, Congress began to formally investigate the effects of over a century of removal of Indian children from their families. Congressionally commissioned reports and wide-ranging testimony wove together a chilling narrative: state and private child welfare agencies, with the backing of state courts, systematically removed Indian children from their families without evidence of harm, and without due process of law. *See, e.g.*, 1978 House Report at 27–28. *Amicus* AAIA documented that Indian children were removed to foster care at much higher rates than non-Indian children. *Id.* at 9. Indian child placement rates from state to state ranged from double to more than twenty times the non-Indian rate, with between 57% and 97% of Indian children placed in non-Indian foster homes. *To Establish Standards for the Placement of Indian Children in Foster or Adoptive Homes, to Prevent the Breakup of Indian Families, and for Other Purposes: Hearing on S. 1214 Before the S. Select Comm. on Indian Affairs*, 95th Cong. 541–602 (1977) (1977 Senate Hearing). Nationwide, removal of Indian children was many times higher than removal of non-Indian children, and "[a]pproximately 90% of the Indian placements were in non-Indian homes." *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 33 (1989) (citing *Problems that American Indian Families*

Face in Raising Their Children and How These Problems are Affected by Federal Action or Inaction: Hearings Before the Subcomm. on Indian Affairs of the S. Comm. on Interior & Insular Affairs, 93d Cong. 75–83 (1974) (1974 Senate Hearings)).[3] Overall, the evidence presented to Congress was both stunning and bleak: "25–35% of all Indian children had been separated from their families and placed in adoptive families, foster care, or institutions." *Holyfield*, 490 U.S. at 32.

This crisis was not limited to Indian families on or near reservations. During the lead-up to ICWA's passage, witnesses described the "constant two-way movement of Indian families and individuals between reservations and urban areas," 1977 Senate Hearing at 350 (letter from Don Milligan, State of Washington Department of Social and Health Services as testimony for Urban and Rural Non-Reservation Task Force), and the high rate of separation for families living off-reservation. Calvin Isaac, Tribal Chief of the Mississippi Band of Choctaw Indians and a member of the National Tribal Chairmen's Association, testified concerning the "incredibly insensitive and oftentimes hostile removal" of children from their homes "under

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[3] In Arizona—home to A.L.M.—Indian children were three and a half times more likely than non-Indian children to be removed from their homes and placed in adoptive or foster care. 1977 Senate Hearing at 544; *see id.* at 546 (noting that in one county, 45 times as many Indian children as non-Indian children were in state-administered foster care). In Nevada—home to Baby O.—Indian children were seven times more likely than non-Indian children to be removed and placed in foster care. 1977 Senate Hearing at 574; *see also* 1974 Senate Hearings at 40–44 (statement of Margaret Townsend) (detailing harassment and abuse of an Indian woman and her children by Nevada authorities under the guise of foster care placement).

color of state and federal authority," and that "[t]he problem exists both among reservation Indians and Indians living off the reservation in urban communities . . . ." *To Establish Standards for Placement of Indian Children in Foster or Adoptive Homes, to Prevent the Breakup of Indian Families, and for other Purposes: Hearings on S. 1214 Before the Subcomm. On Indian Affairs and Public Lands of the H. Comm. on Interior & Insular Affairs*, 95th Cong. 190–91 (1978) (1978 House Hearings). In some states, off-reservation Indian children made up the majority of Indian children in state custody who were eventually adopted out to non-Native families. 1977 Senate Hearing at 350–51. For example, Washington State reported that in 1975 approximately 75% of the Indian children in state custody were located off reservation. 1977 Senate Hearing at 351.

B. Congress Recognized that States Frequently Disregarded Tribal Family Practices, Tribal Sovereignty, and Due Process in the Removal and Placement of Indian Children.

The House Committee considering ICWA determined that states had failed "to take into account the special problems and circumstances of Indian families and the legitimate interest of the Indian tribe in preserving and protecting the Indian family as the wellspring of its own future." 1978 House Report at 19; *see also Holyfield*, 490 U.S. at 31 ("Congress perceived the States and their courts as partly responsible for the child separation problem it intended to correct."). Congress ultimately found that "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 and social standards prevailing in Indian communities and families." 25 U.S.C. § 1901(5).

In the hearings that preceded ICWA, Congress was told repeatedly of the tendency of social workers to apply standards that ignored the realities of Indian societies and cultures:

> [T]he dynamics of Indian extended families are largely misunderstood . . . The concept of the extended family maintains its vitality and strength in the Indian community. By custom and tradition, if not necessity, members of the extended family have definite responsibilities and duties in assisting in childrearing.

1978 House Report at 10, 20; *see also Holyfield*, 490 U.S. at 35 n.4 ("One of the particular points of concern was the failure of non-Indian child welfare workers to understand the role of the extended family in Indian society.").[4] These practices led "many social workers, ignorant of Indian cultural values and social norms, [to] make decisions that are wholly inappropriate in the context of Indian family life and so they frequently discover neglect or abandonment where none exists."

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[4] These failures were particularly pronounced in Texas and Oklahoma; data collected in the early 1980s revealed that caseworkers in those states "would routinely 'judge whether or not a person is Indian by his or her appearance, complexion, hair color, physique,' despite the fact that many tribal members have fair skin, light hair or blue eyes." Hana E. Brown, *Who Is an Indian Child? Institutional Context, Tribal Sovereignty, and Race-Making in Fragmented States*, 85 Am. Soc. Rev. 776, 784–85 (2020) (quoting Jo A. Kessel & Susan P. Robbins, *The Indian Child Welfare Act: Dilemmas and Needs*, 63 Child Welfare 225, 228 (1984)).

1978 House Report at 10; *see also* 1977 Senate Hearing at 73 (statement of Sen. Abourezk) ("[N]on-Indian agencies . . . consistently thought that it was better for the child to be out of the Indian home whenever possible."). Indeed, state agencies often removed or threatened the removal of Indian children *because* their families placed them in the care of relatives or in homes that lacked the amenities conventionally found in non-Indian society. *See, e.g.*, 1977 Senate Hearing at 77–78, 166, 316–17; 1987 House Report at 13. State social workers also exaggerated the problems of Indian communities while overlooking those same problems in the wider society. Jacobs, *supra*, at 148 ("Although alcohol use and abuse permeated all levels of American society, social workers and other state authorities imagined virtually all Indians as alcoholics who were incapable of raising their own children.").

Congress found that the same faulty premises that led to largescale removal of Indian children likewise led to states' resistance to placing Indian children with extended family or other Indian families. *See, e.g.*, 1974 Senate Hearings at 61 (testimony of Dr. Carl Mindell, Department of Psychiatry, Albany Medical College) ("[W]elfare agencies tend to think of adoption too quickly without having other options available . . . [W]elfare agencies are not making adequate use of the Indian communities themselves. They tend to look elsewhere for adoption type of homes."); *see also* Jacobs, *supra*, at 137 (noting that the fostering and adoption of Indian children outside their families and communities had reached crisis proportions by the late 1960s, in part because state welfare authorities and Bureau of Indian Affairs (BIA) officials claimed that "many Indian individuals and families lacked the resources and skills to properly care for their own children."). In short, state social workers'

misunderstanding of, or disdain for, Native communities and cultures led to both unnecessary removals and widespread placement of Indian children with non-Indian families.

Critically, state courts were complicit in these abuses and allowed them to occur in a virtually unfettered fashion. "The decision to take Indian children from their natural homes is, in most cases, carried out without due process of law." 1978 House Report at 11–12; *see also* Jacobs, *supra*, at 151–52. Testimony before Congress revealed "substantial abuses of proper legal procedures," and that Indian parents were "often unaware of their rights and were not informed of them, and they were not given adequate advice or legal assistance at the time when they lost custody of their children." 123 Cong. Rec. 21042, 21043 (1977) (statement of Sen. Abourezk). Tribes, too, frequently were kept in the dark about the removal of Indian children from their parents, families, and communities. *See, e.g.*, 1977 Senate Hearing at 156 (statement of Hon. Calvin Isaac) ("Removal is generally accomplished without notice to or consultation with responsible tribal authorities.").[5]

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[5] These abuses were not limited to involuntary removals; state and private adoption agencies also coerced parents into signing "voluntary" consents to adoption. *See, e.g.*, 1978 House Report at 11; *see also* TASK FORCE FOUR: FEDERAL, STATE, AND TRIBAL JURISDICTION, FINAL REPORT TO THE AMERICAN INDIAN POLICY REVIEW COMMISSION 86 (Comm. Print July 1976), https://tinyurl.com/yckn546b; 1977 Senate Hearing at 141–42; 1974 Senate Hearings at 463 (statement of Sen. Abourezk) ("In many cases [parents] were lied to, they were given documents to sign and they were deceived about the contents of the documents.").

C. Congress Found that Removal of Indian Children to Non-Indian Placements Was Not in the Best Interests of Indian Children or Tribes.

"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." *Holyfield*, 490 U.S. at 49–50. Testimony to Congress was replete with examples of Indian children placed in non-Indian homes who later suffered from identity crises in adolescence and adulthood. *See, e.g.*, 1974 Senate Hearings at 113–14 (testimony of Dr. James H. Shore, Community Psychiatry Training Program and William W. Nicholls, Director, Tribal Health Program, Confederated Tribes of the Warm Springs Reservation). Such testimony led the American Indian Policy Review Commission to conclude that "[r]emoval of Indians from Indian society has serious long- and short-term effects" for the child "who may suffer untold social and psychological consequences." S. Rep. No. 95–597, at 43 (1977); *see also Amici* Former Foster Children Br. at II.

The legislative record also reflects "considerable emphasis on the impact on the tribes themselves of the massive removal of their children." *Holyfield*, 490 U.S. at 34. "For Indians generally and tribes in particular, the continued wholesale removal of their children by nontribal government and private agencies constitutes a serious threat to their existence as ongoing, self-governing communities." 124 Cong. Rec. 38103 (1978) (statement of Rep. Lagomarsino); *see also id*. at 38102 (statement of sponsor Rep. Udall) ("Indian tribes and Indian people are being drained of their children and, as a result, their future as a tribe and a people is being placed in jeopardy.").

Following years of deliberation, Congress enacted ICWA to establish "minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes." 25 U.S.C. § 1902. ICWA's provisions were carefully crafted to address the harms identified during congressional hearings, thereby reflecting "a Federal policy that, where possible, an Indian child should remain in the Indian community." *Holyfield*, 490 U.S. at 37 (quoting 1978 House Report at 23). Because of ICWA, states have experienced reductions in the disproportionately high levels of Indian child removals that prompted congressional action forty years ago. As aptly detailed by the Tribal Defendants and by *Amici* Casey Family Programs, ICWA's legal protections for children and parents continue to provide a vital framework for child welfare proceedings. *See* Tribal Def. Br. at 14–15; Amici Casey Family Programs Br. at A; *see also Amici* National Association of Counsel for Children Br. at II and III.

II. ICWA'S POLITICAL CLASSIFICATIONS ARE AN APPROPRIATE EXERCISE OF CONGRESS'S AUTHORITY THAT DIRECTLY SUPPORT TRIBAL SOVEREIGNTY AND SELF-GOVERNMENT AND FURTHER THE BEST INTERESTS OF INDIAN CHILDREN.

As this Court has "repeatedly emphasized, Congress' authority over Indian matters is extraordinarily broad . . . ." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 (1978); *see also Ysleta del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1934 (2022) ("Under our Constitution, treaties, and laws, Congress . . . bears vital responsibilities in the field of tribal affairs."); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 62 (1996) ("[T]he Indian Commerce Clause accomplishes

a greater transfer of power from the States to the Federal Government than does the Interstate Commerce Clause. This is clear enough from the fact that the States still exercise some authority over interstate trade but have been divested of virtually all authority over Indian commerce and Indian tribes."). In exercising this power, "Congress is invested with a wide discretion, and its action, unless purely arbitrary, must be accepted and given full effect by the courts." *Perrin v. United States*, 232 U.S. 478, 486 (1914). Recognizing that authority, this Court has repeatedly found, against multiple challenges, that federal Indian legislation does not implicate, let alone violate, the Equal Protection Clause. *See, e.g.*, *Morton v. Mancari*, 417 U.S. 535, 552–53, 553 n.24 (1974) (a preference for employing Indians in BIA and Indian Health Service (IHS) positions does "not constitute 'racial discrimination.' Indeed, it is not even a 'racial' preference"); *United States v. Antelope*, 430 U.S. 641, 646 (1977). Rather, this Court has held that the Constitution "singles Indians out as a *proper* subject for separate legislation," and—due to the unique legal status of Tribes—grants Congress vast discretion to legislate with respect to Indian affairs. *Mancari*, 417 U.S. at 551–52 (emphasis added). This principle—that Congress may appropriately exercise its broad Indian affairs power to legislate on behalf of Tribes and Indians—is the bedrock of the vast body of federal Indian law found in Title 25 of the United States Code.

Plaintiffs' arguments to the contrary fail to grasp that Indian political status, not race, is ICWA's touchstone, *see* 25 U.S.C. § 1903(3), (4), (8) (defining, respectively, "Indian," "Indian child," and "Indian tribe"). Further, these arguments mischaracterize foundational precedent and fundamentally misunderstand tribal self-government and sovereignty. ICWA, as well as

Amici Tribes' own child welfare codes, serve to protect these Tribes' sovereign relationships with their children.

A. ICWA Respects the Inherent Sovereign Powers of Tribes to Determine Their Membership and Promotes the Connection Between Child and Tribe.

In seeking to reduce ICWA's preservation of tribal membership for Indian children to a mere "numbers game," Texas Br. at 51, Plaintiffs ignore fundamental concepts of tribal identity, membership, and culture. Plaintiffs further call into question the very nature of tribal membership itself, arguing that because citizenship in many Tribes is grounded in lineal descent, federal laws like ICWA that apply to tribal members—and in essence, the membership decisions themselves—constitute *per se* racial discrimination. Ind. Pl. Br at 31–32; Texas Br. at 42.

To the contrary, this Court has long recognized that tribal membership decisions are fundamental matters of self-governance and essential to tribal sovereignty. *See, e.g.*, *Santa Clara Pueblo*, 436 U.S. at 72 n.32 ("A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community. . . . [T]he judiciary should not rush to create causes of action that would intrude on these delicate matters."); *United States v. Wheeler*, 435 U.S. 313, 322 n.18 (1978) ("[U]nless limited by treaty or statute, a tribe has the power to determine tribe membership."); *Red Bird v. United* States, 203 U.S. 76 (1906) (deferring to tribal membership law in determining allotment rights); *Roff v. Burney*, 168 U.S. 218 (1897) (affirming a Tribe's power to confer and withdraw citizenship).

Tribal membership practices and traditions are extraordinarily weighty matters for individual Tribes. As the Tribal Court of Appeals for *Amicus* Little River Band of Ottawa Indians articulated:

> Tribal membership for Indian people is more than mere citizenship in an Indian tribe. It is the essence of one's identity, belonging to community, connection to one's heritage and an affirmation of their human being place in this life and world. In short, it is not an overstatement to say that it is everything. In fact, it would be an understatement to say anything less. Tribal membership completes the circle for the member's physical, mental, emotional, and spiritual aspects of human life.

Samuelson v. Little River Band of Ottawa Indians-Enrollment Comm'n, No. 06-113-AP, 2007 WL 6900788, at *2 (Little River Ct. App. June 24, 2007). Indeed, the diversity in membership practices across Tribes is a function of each Tribe's unique efforts to best preserve the cohesion and culture of the Tribe as a sovereign nation. *See generally* Bethany R. Berger, Race, Descent, and Tribal Citizenship, 4 Cal. L. Rev. Cir. 23 (2013).

Amici Tribes know that their strength as sovereign nations is inseparable from the health and wellness of their children. These values are woven throughout tribal cultural practices and language; in the Lakota language, for example, the word for "child" aptly translates to "sacred one." W.K. Kellogg Foundation, *"Sacred Little Ones" infuses Native language and culture into early childhood education*, https://tinyurl.com/3svwukzh. Many tribal codes explicitly codify the Tribe's responsibility to protect their children's best interests, preserve their identity as tribal members, and nurture their knowledge of their unique traditional

customs.[6] Consistent with these values, tribal governments offer child welfare services, many of which are "on par with, or exceed, what many state jurisdictions provide." David E. Simmons, *Improving the Well-being of American Indian and Alaska Native Children and Families through State-Level Efforts to Improve Indian Child Welfare Act Compliance*, Nat'l Indian Welfare Ass. 5 (Oct. 2014), https://tinyurl.com/y862a92t; *see also* Margaret Burt, *How the New ICWA*

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[6] *See, e.g.*, KENAITZE INDIAN TRIBE DOMESTIC RELATIONS CODE, Ch. 1 § 1, https://tinyurl.com/2s43bzmz ("The purpose of this law is to provide policies and guidance for the Kenaitze Indian Tribe to take an active role in providing for the health, safety, and welfare of the Kenaitze people, to preserve and strengthen family ties whenever possible, to protect and preserve tribal heritage and cultural identity of the people within the Tribe's jurisdiction, and to promote cooperation with the Tribe by other courts and agencies in fulfilling the purposes of this law. The intention of this law is to promote the health, safety and welfare of the most valuable resource of the Kenaitze people. The welfare of our children and families is of the utmost importance."); CHILDREN'S CODE OF THE TOHONO O'ODHAM NATION, Title 3, Ch. 1, Art 1, § 1101(B)(2), https://tinyurl.com/4hfwdhfp (noting one purpose of the Code is "[t]o preserve the unity of the family through the provision of services to children and families that emphasize, to the extent possible and in the best interest, welfare, and safety of the child, removal prevention, early intervention, and other solutions based on the honored customs and traditions of the Tohono O'odham"); TRIBAL COURT CODE OF THE BAD RIVER BAND OF THE LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS, CHILDREN'S CODE, § 125.01, https://tinyurl.com/624j5nj7 ("Children are the most important asset of the Bad River Tribe. In them lie the Tribe's future, and in their retention of Chippewa culture lies the preservation of the Tribe's past. Their health, safety, and welfare are paramount to the Tribe. . . . It is the Tribe's policy to favor preventive action over belated reaction, mediation over confrontation, counseling over lecturing, conciliation over punishment—but in all decisions made under this code the welfare of the child shall be the ultimate touchstone.").

Regulations Impact Practice, 36 Child L. Prac. 10, 12 (2017).

ICWA strengthens these sovereign goals. In recognition of the importance of tribal membership, ICWA includes interrelated provisions aimed at protecting and furthering Tribes' connections to their children as tribal members. ICWA's definition of "Indian child" is one: ICWA applies to children who either are members of a federally recognized Tribe or are both (i) eligible for membership in such a Tribe and (ii) the biological child of a member. 25 U.S.C. § 1903(4). Congress understood that unenrolled Native children eligible for tribal membership necessarily lack the capacity to "initiate the formal, mechanical procedure necessary to become enrolled in [their] tribe[s] to take advantage of the very valuable cultural and property benefits flowing therefrom." 1978 House Report at 17. Other provisions of ICWA confirm that maintaining a child's political connection to its Tribe is paramount: ICWA requires that the child's Tribe, and, if necessary, the Secretary of the Interior, are notified of involuntary child custody proceedings involving the child, and permits the Tribe to intervene in the proceedings. *See* 25 U.S.C. §§ 1911(c); 1912(a). These provisions ensure that the child's parents and Tribe have the opportunity to perfect tribal membership for their children.[7] Additionally, cognizant of adult adoptees who already had lost their "right to share in the cultural and property benefits" of tribal membership, 124 Cong. Rec. 38103 (statement of Rep. Udall), Congress in ICWA provided a mechanism for the disclosure of information

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[7] These requirements are consistent with United States citizenship practices. *See, e.g.*, 8 U.S.C. §§ 1401(c)–(g), 1431(a) (children born outside the U.S. qualify for citizenship if one or both parents are U.S. citizens and other conditions are met).

necessary for "enrollment or for determining any rights or benefits associated with that membership" for such individuals. 25 U.S.C. § 1951(b). ICWA thus appropriately, and rationally, protects Native children eligible for membership, and not merely those who have had the good fortune to have enrollment paperwork finalized on their behalf prior to the commencement of a child custody proceeding. These provisions are firmly "rooted in the unique status of Indians as 'a separate people' with their own political institutions . . . [and thus] not to be viewed as legislation of a '"racial" group consisting of Indians.'" *Antelope*, 430 U.S. at 646 (quoting *Mancari*, 417 U.S. at 553 n.24).

Regardless of whether lineal descent is considered, tribal membership decisions are decisions of tribal self-governance, not racial categorization. In attacking ICWA on this basis, Plaintiffs necessarily ask this Court to take an extraordinary step and "intrude on . . . delicate matters" that have "long been recognized as central to [Tribes'] existence as . . . independent political communit[ies]." *Santa Clara Pueblo*, 436 U.S. at 72 n.32. This Court should decline the invitation.

B. ICWA's Placement Preferences are Inextricably Linked to Political Status and are Well Within Congress's Power to Protect and Further the Best Interests of Indian Children.

To further its goals of "protect[ing] the best interests of Indian children and . . . promot[ing] the stability and security of Indian Tribes and families," 25 U.S.C. § 1902, Congress established preferences for the adoptive and foster placement of Indian children. The first preference is always for placement within the Indian child's "extended family," regardless of whether those family members are also tribal members. *Id.* § 1915(a)(1),

(b)(i). The next preference is for placement with a member of the Indian child's Tribe, *id.* § 1915(a)(2), or a foster home that has the approval of the Indian child's Tribe. *Id.* § 1915(b)(ii). When those first- and second-order placements are not available, or not in the Indian child's best interests, ICWA gives preference to placement with other Indian families. *Id.* § 1915(a)(3), (b)(iii). Plaintiffs take issue with this third preference, arguing that it impermissibly treats Indians from distinct Tribes as interchangeable. Ind. Pls. Br. at 39.

But the preference for placement with an Indian family, even one affiliated with a different Tribe, helps to protect and preserve the Indian child's political status as an Indian. Because Indian political status is ICWA's touchstone, a child who meets ICWA's definition of "Indian child" will share with an Indian family political status that entitles them to certain employment preferences, 20 U.S.C. § 4418; 25 U.S.C. § 5116; health care, 25 U.S.C. § 1603(12)–(13); housing assistance, 25 U.S.C. § 4103(10); and other benefits provided to Indians because of their political status as Indians. This recognition that tribal members, by virtue of their political status, share a legal identity under federal law is not unique. Congress elsewhere has confirmed the "inherent power of Indian tribes . . . to exercise criminal jurisdiction over all Indians"—even the members of other Tribes. 25 U.S.C. § 1301(2); *see United States v. Lara*, 541 U.S. 193, 196 (2004) (upholding Congress's recognition of this inherent authority). *See Amici* National Indigenous Women's Resource Center Br. at II.

In addition to preserving a child's political and legal identity, placement with an Indian family helps to protect and preserve the child's *personal* identity as

an Indian. Lynn Klicker Uthe, *The Best Interests of Indian Children in Minnesota*, 17 Am. Indian L. Rev. 237, 252–53 (1992) (describing the significance of Indian cultural identity in the well-being of Indian children). As the brief of *Amici* Casey Family Programs discusses at length, adhering to these placement preferences leads to demonstrably better outcomes for Indian children. *See* Br. at B.

ICWA's placement preferences effectively codify protections for the extended family dynamic discussed at length in testimony, which, Congress found, had certain commonalities that spanned tribal cultures. *See, e.g.*, 1978 House Hearings at 69 (statement of LeRoy Wilder, AAIA) ("Indian cultures universally recognize a very large extended family."). Congress, through ICWA's placement preferences, was acting well within its powers to protect the political and legal status of eligible Indian children, and in so doing "protect[ing] the best interests of Indian children." 25 U.S.C. § 1902.

III. CONGRESS'S AUTHORITY TO LEGISLATE ON BEHALF OF TRIBES, TRIBAL MEMBERS, AND THEIR CHILDREN EXTENDS TO BOTH ON- AND OFF-RESERVATION LANDS.

Plaintiffs attempt to rewrite this Court's Indian affairs jurisprudence to include two equally artificial limitations: first suggesting that a political classification may be upheld only if it supports self-governance, and then arguing that the only laws that could conceivably promote tribal self-governance are those that do not have effect outside reservation boundaries. *See, e.g.*, Ind. Pl. Br. at 26. But this Court's holdings have never been so cramped. What is more, if adopted, Plaintiffs' artificial limitations not only would eviscerate

ICWA's protections for Indian children, families, and Tribes, but also would eliminate Congress's ability to legislate for the millions of tribal citizens who do not live near their Tribe's reservation, as well as for the hundreds of thousands of Indians and Alaska Natives who are members of the over 230 federally recognized Tribes that lack reservations.

A. Plaintiffs' Arguments Threaten Scores of Laws Passed for the Benefit of Millions of Tribal Members Living Off-Reservation.

As early as 1865, this Court noted that Congress's ability to legislate "in reference to any Indian tribe, or any person who is a member of such tribe, is absolute, without reference to the locality of the traffic, or the locality of the tribe, or the member of the tribe with whom it is carried on." *United States v. Holliday*, 70 U.S. 407, 418 (1865); *see also United States v. Nice*, 241 U.S. 591, 597 (1916) (Congress's authority "to regulate or prohibit traffic in intoxicating liquor with tribal Indians within a State, whether upon or off an Indian reservation, is well settled"). Indeed, even the employment preference at issue in *Mancari*—which the Individual Plaintiffs and Texas use as the foundation for their limiting theory—was not limited to Indians "on or near reservations," but rather extended to qualified Indian applicants regardless of where they lived or the locations of their BIA or IHS offices. 25 U.S.C. § 5116 (previously codified at 25 U.S.C. § 472); 417 U.S. at 537–39.[8]

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[8] To be sure, this Court has recognized a "significant geographical component to tribal sovereignty . . . [that] remains an important factor to weigh in determining whether *state authority* has exceeded the permissible limits" in its application

As *Amici* Members of Congress rightly note, Congress has, consistent with its Indian affairs power, enacted scores of laws singling out Indian individuals and federally recognized Tribes for a variety of programs. *See, e.g.*, Br. at 1. Many of these laws carry out specific promises embodied in treaties and obligations assumed by the United States that are tied to the vast cessions of land and resources by tribal nations, and the federal government's corresponding trust responsibility. *See generally Cohen's Handbook of Federal Indian Law* § 22.01[3] (Nell Jessup Newton eds., 2017) ("Obligation to Provide Services"). Many of these laws have no explicit tie to tribal self-governance, have no geographical limitation, and are directed specifically for off-reservation Indians. And, like ICWA, many of these laws are aimed at addressing past policy failures. For example, during the 1950s and 1960s, federal programs sought to assimilate tribal members into non-Indian society by encouraging them to leave their reservations and move to urban areas across the country. Thomas A. Britten, *Urban American Indian Centers in the Late 1960s-1970s: An Examination of their Function and Purpose*, 27 Indigenous Pol'y J. 1, 2 (2017). By 1970, nearly 87,000 Indians—more than a quarter of the 340,000 Native Americans living in

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on a Tribe's reservation. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 151 (1980) (emphasis added). Similarly, this Court has considered certain restraints on the exercise of tribal authority concerning on-reservation activities of non-Indians. *See Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 327 (2008). But, *contra* Individual Plaintiffs' Brief at 26, these cases say nothing about the extent of *Congress's authority* to legislate for the protection of Tribes, their sovereignty, and their members, let alone whether such authority should be limited to a Tribe's reservation. As noted above, this Court has consistently held that authority is not so limited.

urban areas at the time—had moved to cities as a result of the program. U.S. Dep't of Health, Educ. & Welfare, Office of Special Concerns, A Study of Selected Socio-Economic Characteristics of Ethnic Minorities Based on the 1970 Census, Vol. III: American Indians 83, Table J-1 (1974).[9] Later that decade, Congress enacted the Indian Health Care Improvement Act of 1975, which sought, among other things, to ensure that urban Indians were provided the same access to federal health care programs as those living on-reservation. *See Indian Health Care Improvement Act: Hearing on H.R. 2525 and Related Bills Before the Subcomm. on Indian Affairs of the H. Comm. on Interior & Insular Affairs*, 94th Cong. 29 (1975).

Given that this Court has long recognized, and Congress has long exercised, Congress's ability to legislate for Indian people regardless of location, it is hard to overstate the effect on well-settled federal Indian law if this Court were to now limit Congress's power to legislating with respect to "members of Indian tribes on or near Indian lands." In addition to invalidating the laws described above, such an unprecedented reading would effectively terminate Congress's relationship to and obligations towards millions of Indians currently living off-reservation. *See* U.S. Census Bureau, 2010 Census Brief: The American Indian and Alaska Native Population: 2010,

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[9] One of the primary relocation cities was Dallas, Texas, where the Bureau of Indian Affairs established a relocation assistance center. Britten, *supra*, at 2. By 1969, Dallas was home to an estimated 15,000 Indians representing 84 Tribes, some from as far away as Alaska. Mary Patrick, *Indian Urbanization in Dallas: A Second Trail of Tears?*, 1 ORAL HIST. REV. 48, 48–49 (1973). As a result, Indian families increasingly interacted with Texas agencies, including child welfare agencies.

at 12–13 (Jan. 2012), https://tinyurl.com/4zvea3 z7 (reporting that 78% of the 5.2 million American Indians and Alaska Natives resided in urban areas).

B. Plaintiffs' Arguments Threaten to Rewrite the Relationship between Congress and Hundreds of Federally Recognized Tribes.

Even if Indian legislation could survive an equal protection challenge only if it were directly related to promoting self-governance—a position Tribal *Amici* do not concede—the multitude of federally recognized Tribes that either lack reservations or were, until comparatively recently, landless make plain that self-governance does not occur only "on or near" reservations.

For much of the Nation's history, federal policy toward Tribes was dedicated to forced assimilation, wholesale removal from historical homelands, and even extinction. *See generally Cohen's Handbook* § 1.04 ("Allotment and Assimilation"). Tribes and Native peoples persevered during this period, although many have experienced and continue to experience prolonged periods of landlessness. California's Tribes, for example, were largely dispossessed of their lands as part of a history of "violence, exploitation, dispossession and the attempted destruction of tribal communities." Cal. Exec. Order N-15-19 (June 18, 2019). While the government-to-government relationships with several terminated Tribes were restored, these actions often did not come with the immediate restoration of a land base. *See e.g.*, *Table Bluff Band of Indians v. Andrus*, 532 F. Supp. 255, 261–62 (N.D. Cal. 1981) (recognizing that a wrongfully terminated Tribe lost land as a result); *Duncan v. Andrus*, 517 F. Supp. 1, 6 (N.D. Cal. 1977) (holding that the Tribe should be

"unterminated" and was "entitled to prompt relief" but that the return of land ownership would be more complicated); *see also* Advisory Council on California Indian Policy, ACCIP Trust and Natural Resources Report 4, 12, 25 (Sept. 1997) (ACCIP Report), https://tinyurl.com/ye85t57n. And although the federal government later acquired modest plots of land for some of these Tribes,[10] many were exceedingly small, and there continue to be Tribes that have no land held in trust. ACCIP Report at 12 ("At least eighteen recognized tribes in California have no tribal land base whatsoever. Many of the reservations in California are extremely small: most are less than 500 acres; 22 are 100 acres or less and, of these, 16 are 50 acres or less, seven are 20 acres or less, five are under 10 acres, and four are under five acres."); Governor's Office of the Tribal Advisor, California Native Lands Boundaries—Reservations and Rancherias, https://tinyurl.com/mrvk4sms (showing that twenty-eight California Tribes occupy fewer than fifty acres of land held in trust, and some occupy none). Regardless, these deprivations in California and elsewhere did not negate Congress's Indian affairs authority as to these Tribes.

Hundreds of Tribes continue to lack reservation lands today.[11] Alaska is home to 229 federally recog-

[10] *See, e.g.*, Auburn Indian Restoration Act, 108 Stat. 4533 (1994); Paskenta Band Restoration Act, 108 Stat. 4791 (1994).

[11] Although illustrative, Alaska Tribes are not unique—Tribes in multiple states lack reservation lands, including California (as discussed above), Montana, and Virginia. For example, although there are seven Tribes in Virginia, the majority lack reservation lands. *See* Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Pub. L. No. 115-121, H.R. 984, 115th Cong. (2018) (affirming that for each of the six Tribes, the "Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized

nized Tribes—40% of the Nation's 574 Tribes—yet only one has a reservation. Enacted seven years before ICWA, the Alaska Native Claims Settlement Act of 1971 (ANCSA), revoked the reservation status of all Alaska Native Tribes except the Metlakatla Indian Community. *See* 43 U.S.C. §§ 1601 *et seq*. As a result, land held by 228 of Alaska's 229 Tribes is not within a "reservation," as that term is defined in ICWA and numerous other statutes.

Be that as it may, thousands of Alaska Natives live in their tribal communities, speak their native languages, and practice their traditional ways of life on lands that are not reservations but are nonetheless the lands on which their people have lived since time immemorial. For many Alaska Native villages, the tribal government is the only government in the community. Alaska Comm'n on Rural Governance and Empowerment, Final Report to the Governor at 11, 24–25 (1999). While this Court has held that former reservation land owned by an Alaska Tribe in fee simple does not constitute "Indian country" within the meaning of 18 U.S.C. § 1151, *Alaska v. Native Vill. Of Venetie Tribal Gov't*, 522 U.S. 520, 532–34 (1998), ANCSA did not deprive Alaska Tribes of their sovereign authority as Tribes, or Congress of its powers to deal with them as such. In reliance on this Court's decision in *Venetie*, the Alaska Supreme Court has repeatedly confirmed that Alaska Tribes retain all sovereign authority not specifically divested by Congress and concluded that Tribes' abilities to conduct internal self-governance functions—including tribal decisions

Indian tribes without regard to the existence of a reservation for the Tribe"). Though the Act provides for the process for six of the seven federally recognized tribes in Virginia to take land into trust, only one of the six has acquired trust lands to date.

about the best interests of tribal children—do not depend on the existence of Indian country. *See John v. Baker*, 982 P.2d 739, 751, 755–58 (Alaska 1999); *see also Kaltag Tribal Council v. Jackson*, 344 F. App'x 324 (9th Cir. 2009), *cert. denied* 562 U.S. 827 (2010).

Despite fluctuations in federal policy and in the land status of individual Tribes, Congress's Indian affairs authority has not diminished. Congress's authority over Indian affairs is a "continuing power of which Congress c[an] not devest itself." *Nice*, 241 U.S. at 600; *see also United States v. John*, 437 U.S. 634, 653 (1978) ("Neither the fact that the Choctaws in Mississippi are merely a remnant of a larger group of Indians, long ago removed from Mississippi, nor the fact that federal supervision over them has not been continuous, destroys the federal power to deal with them."). Congress has confirmed through the Federally Recognized Indian Tribe List Act of 1994 that its authority extends to all federally recognized Tribes, and it prohibited the Executive Branch from extending or withdrawing access to special federal benefits, irrespective of an individual Tribe's history or whether it has reservation lands. Pub. L. 103–263, 108 Stat. 709 (codified at 25 U.S.C. § 5123(f)–(g)).

Plaintiffs' proposed geographical limitation would effectively render most Indian legislation a nullity for hundreds of federally recognized Tribes in Alaska and elsewhere, their hundreds of thousands of tribal members, and the millions of tribal citizens who do not live near their Tribe's reservation. Such an extreme interpretation has never been adopted by this or any other court, makes no practical sense, and finds no support in centuries of established federal Indian law.

CONCLUSION

ICWA remains one of the most important pieces of federal Indian legislation ever enacted. It has provided immense and lasting benefit to *amici* Tribes and tribal organizations and their collective goals in furthering tribal sovereignty and the best interests of Indian children. The Court should uphold ICWA as an appropriate exercise of Congress's Indian affairs power.

Respectfully submitted,

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APPENDIX

APPENDIX

AMICI CURIAE FEDERALLY RECOGNIZED TRIBES ON THIS BRIEF

Alabama

Poarch Band of Creek Indians

Alaska

Agdaagux Tribe of King Cove
Akiachak Native Community
Akiak Native Community
Alatna Village
Aleut Community of St. Paul Island
Algaaciq Native Village
Alutiiq Tribe of Old Harbor
Angoon Community Association
Anvik Traditional Council
Arctic Village
Asa'carsarmiut Tribe
Atmautluak Traditional Council
Beaver Village Council
Birch Creek Tribe
Central Council of the Tlingit & Haida Indian Tribes of Alaska
Chalkyitsik Village Council
Chefornak Traditional Council
Chevak Native Village
Chickaloon Native Village
Chilkat Indian Village
Chilkoot Indian Association
Chinik Eskimo Community
Chignik Bay Tribal Council
Chuathbaluk Traditional Council
Chuloonawick Native Village
Craig Tribal Association
Curyung Tribal Council
Emmonak Tribal Council
Evansville Village (aka Bettles Field)
Gulkana Village Council
Gwichyaa Zhee Gwich'in Tribal Government
Healy Lake Village Council
Holy Cross Tribe
Hoonah Indian Association
Hughes Village Council
Inupiat Community of the Arctic Slope

Inupiat Community of the Arctic Slope
Kaguyak Village
Kenaitze Indian Tribe
Ketchikan Indian Community
King Island Native Community
King Salmon Tribe
Klawock Cooperative Association
Knik Tribe
Kokhanok Village
Kotlik Tribal Council
Louden Tribal Council (Galena Village)
McGrath Native Village
Mentasta Traditional Council
Metlakatla Indian Community
Naknek Native Village Council
Native Village of Afognak
Native Village of Alakanuk
Native Village of Aleknagik
Native Village of Atka
Native Village of Akutan
Native Village of Barrow
Native Village of Belkofski
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Chitina
Native Village of Council
Native Village of Deering
Native Village of Diomede
Native Village of Dot Lake
Native Village of Eagle
Native Village of Eek
Native Village of Eklutna
Native Village of Elim
Native Village of Eyak
Native Village of False Pass
Native Village of Gakona
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Native Village of Hooper Bay
Native Village of Kalskag
Native Village of Kaltag
Native Village of Kiana
Native Village of Kipnuk
Native Village of Kluti-Kaah
Native Village of Kongiganak
Native Village of Kotzebue
Native Village of Koyuk

Native Village of Marshall
Native Village of Mary's Igloo
Native Village of Mekoryuk
Native Village of Minto
Native Village of Nanwalek
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nightmute
Native Village of Nikolski
Native Village of Noatak
Native Village of Nuiqsut
Native Village of Nunam Iqua
Native Village of Ouzinkie
Native Village of Perryville
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Native Village of Ruby
Native Village of Saint Michael
Native Village of Savoonga
Native Village of Scammon Bay
Native Village of Selawik
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Stevens
Native Village of Tanacross
Native Village of Tanana
Native Village of Tazlina
Native Village of Teller
Native Village of Tetlin
Native Village of Tuntutuliak
Native Village of Tununak
Native Village of Unalakleet
Native Village of Venetie Tribal Government
Native Village of Wales
Native Village of White Mountain
Nenana Native Association
Newhalen Tribal Council
Nikolai Edzeno' Village Council
Ninilchik Village
Nome Eskimo Community
Nondalton Village
Northway Village

Noorvik Native Community
Nulato Tribal Council
Ohogamiut Traditional Council
Organized Village of Kake
Organized Village of Kasaan
Organized Village of Kwethluk
Organized Village of Saxman
Orutsararmiut Native Council
Pauloff Harbor Tribe
Pedro Bay Village
Petersburg Indian Association
Pilot Station Traditional Village
Portage Creek Village Council
Rampart Village Council
Salamatof Tribe
Seldovia Village Tribe
Sitka Tribe of Alaska
Skagway Traditional Council
Stebbins Community Association
Sun'aq Tribe of Kodiak
Tangirnaq Native Village
Traditional Village of Togiak
Tuluksak Native Community
Twin Hills Village
Ugashik Traditional Village
Venetie Village Council
Village of Iliamna
Village of Lower Kalskag
Village of Solomon
Village of Stony River
Village of Wainwright
Wrangell Cooperative Association
Yakutat Tlingit Tribe

Arizona

Ak-Chin Indian Community
Cocopah Indian Tribe of the Cocopah Indian Reservation
Colorado River Indian Tribes
Fort McDowell Yavapai Nation
Gila River Indian Community
Havasupai Tribe
Hopi Tribe of Arizona
Hualapai Tribe
Kaibab Band of Paiute Indians
Pascua Yaqui Tribe
Quechan Indian Tribe of the Fort Yuma Indian Reservation

Salt River Pima-Maricopa Indian Community
San Carlos Apache Tribe
San Juan Southern Paiute Tribe
Tohono O'odham Nation
Tonto Apache Tribe
White Mountain Apache Tribe
Yavapai-Apache Nation

California

Agua Caliente Band of Cahuilla Indians
Alturas Indian Rancheria
Augustine Band of Cahuilla Indians
Barona Band of Mission Indians
Bear River Band of the Rohnerville Rancheria
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria
Big Pine Paiute Tribe of the Owens Valley
Big Sandy Rancheria of Western Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria
Bishop Paiute Tribe
Blue Lake Rancheria of California
Bridgeport Indian Colony
Buena Vista Rancheria of Me-Wuk Indians of California
Cabazon Band of Cahuilla Indians
Cachil Dehe Band of Wintun Indians of the Colusa Indian Community
Cahto Tribe of the Laytonville Rancheria
Cahuilla Band of Indians
California Valley Miwok Tribe
Campo Band of Mission Indians
Cedarville Rancheria
Chemehuevi Indian Tribe
Cher-Ae Heights Indian Community of the Trinidad Rancheria
Chicken Ranch Rancheria of Me-Wuk Indians
Cloverdale Rancheria of Pomo Indians
Cold Springs Rancheria of Mono Indians
Coyote Valley Band of Pomo Indians
Dry Creek Rancheria Band of Pomo Indians
Elem Indian Colony

Elk Valley Rancheria, California
Estom Yumeka Maidu Tribe of the Enterprise Rancheria
Ewiiaapaayp Band of Kumeyaay Indians
Federated Indians of Graton Rancheria
Fort Bidwell Indian Community Council
Fort Independence Community of Paiute Indians of the Fort Independence Reservation
Fort Mojave Indian Tribe
Greenville Rancheria
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake
Hopland Band of Pomo Indians
Hoopa Valley Tribe
Iipay Nation of Santa Ysabel
Inaja-Cosmit Band of Mission Indians
Ione Band of Miwok Indians
Jackson Band of Miwuk Indians
Jamul Indian Village of California
Karuk Tribe
Kashia Band of Pomo Indians of the Stewarts Point Rancheria
Kletsel Dehe Wintun Nation
Koi Nation of Northern California
La Jolla Band of Luiseño Indians
La Posta Band of Mission Indians
Lone Pine Paiute-Shoshone Tribe
Los Coyotes Band of Cahuilla & Cupeño Indians
Lytton Rancheria of California
Manchester Point Arena Band of Pomo Indians
Manzanita Band of Diegueno Mission Indians
Mechoopda Indian Tribe of Chico Rancheria, California
Mesa Grande Band of Mission Indians
Middletown Rancheria of Pomo Indians of California

Mooretown Rancheria of Maidu Indians
North Fork Rancheria of Mono Indians of California
Pala Band of Mission Indians
Paskenta Band of Nomlaki Indians
Pauma Band of Mission Indians
Pechanga Band of Indians
Picayune Rancheria of the Chukchansi Indians
Pinoleville Pomo Nation
Pit River Tribe
Potter Valley Tribe
Quartz Valley Indian Reservation
Ramona Band of Cahuilla
Redding Rancheria
Redwood Valley Little River Band of Pomo Indians
Resighini Rancheria
Rincon Band of Luiseño Indians
Robinson Rancheria Band of Pomo Indians
Round Valley Indian Tribes
San Pasqual Band of Mission Indians
Santa Rosa Band of Cahuilla Indians
Santa Rosa Rancheria Tachi Yokut Tribe
Santa Ynez Band of Chumash Indians
Scotts Valley Band of Pomo Indians
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians
Soboba Band of Luiseño Indians
Susanville Indian Rancheria
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria
Tejon Indian Tribe
Timbisha Shoshone Tribe
Tolowa Dee-ni' Nation
Torres Martinez Desert Cahuilla Indians
Tule River Indian Tribe of the Tule River Reservation, California
Tuolumne Band of Me-Wuk Indians
Twenty-Nine Palms Band of Mission Indians

United Auburn Indian Community of the Auburn Rancheria of California
Utu Utu Gwaitu Paiute Tribe
Viejas Band of Kumeyaay Indians
Wilton Rancheria
Wiyot Tribe
Yuhaaviatam of San Manuel Nation
Yurok Tribe
Yocha Dehe Wintun Nation of California

Colorado

Southern Ute Indian Tribe
Ute Mountain Ute Tribe

Connecticut

Mashantucket (Western) Pequot Tribe
Mohegan Tribe of Indians of Connecticut

Florida

Miccosukee Tribe of Indians of Florida
Seminole Tribe of Florida

Idaho

Coeur d'Alene Tribe
Kootenai Tribe of Idaho
Nez Perce Tribe
Shoshone-Bannock Tribes of the Fort Hall Reservation

Indiana

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Kansas

Iowa Tribe of Kansas and Nebraska
Kickapoo Tribe in Kansas
Prairie Band Potawatomi Nation
Sac and Fox Nation of Missouri in Kansas and Nebraska

Louisiana

Chitimacha Tribe of Louisiana
Coushatta Tribe of Louisiana
Jena Band of Choctaw Indians
Tunica-Biloxi Indian Tribe

Maine

Houlton Band of Maliseet Indians
Mi'kmaq Nation

Passamaquoddy Tribe
Penobscot Indian Nation

Massachusetts

Mashpee Wampanoag Tribe
Wampanoag Tribe of Gay Head (Aquinnah)

Michigan

Bay Mills Indian Community
Grand Traverse Band of Ottawa and Chippewa Indians
Hannahville Indian Community
Keweenaw Bay Indian Community
Lac Vieux Desert Band of Lake Superior Chippewa Indians
Little River Band of Ottawa Indians
Little Traverse Bay Bands of Odawa Indians
Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan (Gun Lake Tribe)
Nottawaseppi Huron Band of the Potawatomi
Saginaw Chippewa Indian Tribe of Michigan
Sault Ste. Marie Tribe of Chippewa Indians

Minnesota

Bois Forte Band of Chippewa
Fond du Lac Band of Lake Superior Chippewa
Grand Portage Band of Lake Superior Chippewa
Leech Lake Band of Ojibwe
Lower Sioux Indian Community in the State of Minnesota
Mille Lacs Band of Ojibwe
Minnesota Chippewa Tribe and its component reservations:
Prairie Island Indian Community
Red Lake Band of Chippewa Indians
Shakopee Mdewakanton Sioux Community
Upper Sioux Community
White Earth Band of Ojibwe

Mississippi

Mississippi Band of Choctaw Indians

Montana

Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation
Blackfeet Tribe
Chippewa Cree Tribe
The Confederated Salish and Kootenai Tribes
Crow Tribe of Montana
Fort Belknap Indian Community
Little Shell Tribe of Chippewa Indians of Montana
Northern Cheyenne Tribe

Nebraska

Omaha Tribe of Nebraska
Ponca Tribe of Nebraska
Santee Sioux Nation
Winnebago Tribe of Nebraska

Nevada

Duckwater Shoshone Tribe
Ely Shoshone Tribe
Fallon Paiute Shoshone Tribe
Fort McDermitt Paiute-Shoshone Tribe
Las Vegas Paiute Tribe
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Moapa Band of Paiutes
Pyramid Lake Paiute Tribe
Reno-Sparks Indian Colony
Shoshone Paiute Tribes of Duck Valley
Summit Lake Paiute Tribe
Te-Moak Tribe of Western Shoshone Indians of Nevada
Walker River Paiute Tribe
Washoe Tribe of Nevada and California
Winnemucca Indian Colony of Nevada
Yerington Paiute Tribe

New Mexico

Jicarilla Apache Nation
Mescalero Apache Tribe
Nambe Pueblo
Ohkay Owingeh
Pueblo de Cochiti
Pueblo de San Ildefonso
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez

Pueblo of Laguna
Pueblo of Picuris
Pueblo of Pojoaque
Pueblo of San Felipe
Pueblo of Sandia
Pueblo of Santa Ana
Pueblo of Tesuque
Pueblo of Zia
Santa Clara Pueblo
Santo Domingo Pueblo
Taos Pueblo
Zuni Tribe

New York

Cayuga Nation
Oneida Indian Nation
Saint Regis Mohawk Tribe
Seneca Nation of Indians
Shinnecock Indian Nation

North Carolina

Eastern Band of Cherokee Indians

North Dakota

Spirit Lake Tribe
Standing Rock Sioux Tribe
Three Affiliated Tribes
Turtle Mountain Band of Chippewa Indians

Oklahoma

Absentee Shawnee Tribe of Indians of Oklahoma
Caddo Nation of Oklahoma
Cheyenne and Arapaho Tribes
Chickasaw Nation
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation
Delaware Nation
Delaware Tribe of Indians
Eastern Shawnee Tribe of Oklahoma
Fort Sill Apache Tribe of Oklahoma
Iowa Tribe of Oklahoma
Kaw Nation
Kialegee Tribal Town
Kickapoo Tribe of Oklahoma
Kiowa Tribe
Miami Tribe of Oklahoma
Modoc Nation
Muscogee (Creek) Nation
Osage Nation
Otoe-Missouria Tribe of Indians
Ottawa Tribe of Oklahoma
Pawnee Nation of Oklahoma

Peoria Tribe of Indians of Oklahoma
Quapaw Nation
Sac and Fox Nation
Seminole Nation of Oklahoma
Seneca-Cayuga Nation
Shawnee Tribe
Tonkawa Tribe of Indians of Oklahoma
United Keetoowah Band of Cherokee Indians
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Wyandotte Nation

Oregon

Burns Paiute Tribe
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of Siletz Indians
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of the Warm Springs Reservation of Oregon
Coquille Indian Tribe
Cow Creek Band of Umpqua Tribe of Indians
Klamath Tribes

South Carolina

Catawba Indian Nation

South Dakota

Cheyenne River Sioux Tribe
Crow Creek Sioux Tribe
Flandreau Santee Sioux Tribe
Lower Brule Sioux Tribe
Oglala Sioux Tribe
Rosebud Sioux Tribe
Sisseton-Wahpeton Oyate
Yankton Sioux Tribe

Texas

Alabama-Coushatta Tribe of Texas
Kickapoo Traditional Tribe of Texas
Ysleta del Sur Pueblo

Utah

Confederated Tribes of the Goshute Reservation
Northwestern Band of the Shoshone Nation

Paiute Indian Tribe of Utah
—Cedar Band of Paiutes
—Kanosh Band of Paiutes
—Koosharem Band of Paiutes
—Indian Peaks Band of Paiutes
—Shivwits Band of Paiutes
Ute Indian Tribe of the Uintah and Ouray Reservation

Virginia

Chickahominy Indian Tribe
Chickahominy Indian Tribe—Eastern Division
Monacan Indian Nation
Nansemond Indian Nation
Pamunkey Indian Tribe
Rappahannock Tribe
Upper Mattaponi Indian Tribe

Washington

Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Chehalis Reservation
Confederated Tribes of the Colville Reservation
Cowlitz Indian Tribe
Hoh Indian Tribe
Jamestown S'Klallam Tribe
Kalispel Tribe of Indians
Lower Elwha Klallam Tribe
Lummi Nation
Makah Indian Tribe of the Makah Indian Reservation
Muckleshoot Indian Tribe
Nisqually Indian Tribe
Nooksack Indian Tribe
Port Gamble S'Klallam Tribe
Puyallup Tribe of Indians
Quileute Tribe
Samish Indian Nation
Sauk-Suiattle Indian Tribe
Shoalwater Bay Tribe
Skokomish Indian Tribe
Snoqualmie Indian Tribe
Spokane Tribe of Indians of the Spokane Indian Reservation
Squaxin Island Tribe
Stillaguamish Tribe

Suquamish Tribe
Swinomish Indian Tribal Community
Tulalip Tribes
Upper Skagit Indian Tribe

Wisconsin

Bad River Band of Lake Superior Tribe of Chippewa Indians
Forest County Potawatomi Community
Ho-Chunk Nation
Lac Courte Oreilles Band of Lake Superior Chippewa Indians
Lac du Flambeau Band of Lake Superior Chippewa Indians
Menominee Indian Tribe of Wisconsin
Red Cliff Band of Lake Superior Chippewa Indians
Sokaogon Chippewa Community
St. Croix Chippewa Indians of Wisconsin
Stockbridge-Munsee Community

Wyoming

Eastern Shoshone Tribe of the Wind River Reservation, Wyoming
Northern Arapaho Tribe of the Wind River Reservation, Wyoming

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AMICI CURIAE NATIONAL TRIBAL AND NATIVE NON-PROFIT ORGANIZATIONS ON THIS BRIEF:

Association on American Indian Affairs

National Congress of American Indians

National Indian Child Welfare Association

AMICI CURIAE OTHER REGIONAL AND NATIONAL TRIBAL ORGANIZATIONS AND INDIAN NON-PROFIT ORGANIZATIONS:

Affiliated Tribes of Northwest Indians

Alaska Federation of Natives

Alaska Tribal Unity

All Pueblo Council of Governors

California Tribal Chairpersons' Association

Great Plains Tribal Chairmen's Association, Inc.

Inter Tribal Association of Arizona

Midwest Alliance of Sovereign Tribes

United South and Eastern Tribes Sovereignty Protection Fund, Inc.

Alaska Native Tribal Health Consortium

Aleutian Pribilof Islands Association, Inc.

Arctic Slope Native Association

Association of Village Council Presidents

Bristol Bay Area Health Corporation

Bristol Bay Native Association

Chugachmiut

Consolidated Tribal Health Project, Inc.

Copper River Native Association

Feather River Tribal Health, Inc.

Great Lakes Inter-Tribal Council, Inc.

Indian Child & Family Preservation Program

Inter-Tribal Council of Michigan

Kawerak, Inc.

Kodiak Area Native Association

Maniilaq Association

Owens Valley Career Development Center

Riverside-San Bernardino County Indian Health, Inc.

Rocky Mountain Tribal Leaders Council

Sonoma County Indian Health Project Inc.

Tanana Chiefs Conference

Alaska Native Health Board

Alaska Native Justice Center

Americans for Indian Opportunity

California Indian Legal Services

California Tribal Families Coalition

Center for Indian Law and Policy

Fairbanks Native Association

First Alaskans Institute

Indigenous Peoples Law and Policy Program

Inter-Tribal Council of California

Michigan Indian Legal Services, Inc.

National American Indian Court Judges Association

National Indian Education Association

National Indian Head Start Directors Association

National Indian Health Board

National Indian Justice Center

National Native American Bar Association

National Native American Human Resources Association

Native American Budget Policy Institute

Native American Disability Law Center

Native American Training Institute

NAYA Action Fund

Nebraska Indian Child Welfare Coalition

Northwest Portland Area Indian Health Board

Oklahoma Indian Child Welfare Association

Oklahoma Indian Legal Services, Inc.

Sealaska Heritage Institute

The Yarrow Project

United Indians of All Tribes Foundation