IN THE

SUPREME COURT

OF THE UNITED STATES

No. 22-386

OCTOBER TERM 2022

STUART IVANHOE, SECRETARY OF THE INTERIOR, *et al.*,

Petitioners,

v.

JAMES AND GLENYS DONAHUE, AND THE STATE OF WEST DAKOTA,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Thirteenth Circuit

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Brief for Petitioner

Oral Argument Requested

Team 22

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

SECONDARY SOURCES

QUESTIONS PRESENTED

I. Whether Congress violates the anti-commandeering doctrine when it imposes obligations on state courts to enforce federal rights conferred onto Indian tribes and individuals involved in child custody proceedings.

II. Whether the Indian Child Welfare Act's Native American preference classifications violate the Equal Protection clause of the Fifth Amendment when the classifications are politically based and satisfy rational basis review.

STATEMENT OF THE CASE AND FACTS

Congress enacted in Indian Child Welfare Act (ICWA) in response to alarming "reports of increasing numbers of Indian children being separated from their families and tribes through adoption or foster care placement in non-Indian homes." R. at 4; 25 U.S.C. § 1901. ICWA's intended goal is to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" by establishing federal standards for the placement of Native American children in tribal foster or adoptive homes and assisting Native American tribes in the operations of their children and family service programs. R. at 4; 25 U.S.C. § 1902.

Between 2019 and 2020, Respondents James and Glenys Donahue sought to adopt two Native American children, Baby C and Baby S. R. at 2, 3. Baby C's biological mother is an enrolled member of the Quinault Nation, and her biological father is an enrolled member of the Cherokee Nation. R. at 2. For the first eight months of her life, Baby C was in the custody of her maternal aunt. R. at 2. Child Protective Services (CPS) removed Baby C from her maternal aunt's home and placed her in foster care with the Donahues after receiving reports that the baby was left unattended for long periods of time while her aunt worked. R. at 2. As required by ICWA, CPS notified the Quinault Nation and the Cherokee Nation of Baby C's placement with the Donahues, where she lived for two years. R. at 2. In August 2019, a West Dakota state court terminated the parental rights of Baby C's biological parents, making her eligible for adoption under West Dakota state law. R. at 3. In September 2019, Baby C's biological parents and maternal aunt gave consent for the Donahues to commence adoption proceedings for Baby C. R. at 3. In compliance with ICWA, the Quinault Nation and Cherokee Nation were notified of the proceedings. R. at 3. The Quinault Nation and Cherokee Nation agreed to designate the Quinault Nation as Baby C's tribe for the purposes of applying ICWA to the state adoption proceedings. R. at 3. During the state

adoption proceedings, there was no intervention by either tribe or otherwise formal attempts to adopt Baby C—for this reason, the Donahues, CPS, and Baby C's guardian ad litem stipulated that ICWA's placement preferences did not apply to Baby C's adoption proceeding. R. at 3. Baby C's adoption by the Donahues was finalized in West Dakota state court in January 2020. R. at 3.

Baby S's late biological mother was a member of the Quinault Nation, and the identity of Baby S's biological father is unknown. R. at 3. Baby S was in the custody of his paternal grandmother for the first four months of his life. R. at 3. In April 2020, Baby S was placed in foster care with the Donahues after his grandmother became ill and was unable to care for him. R. at 3. In May 2020, the Donahues filed a petition for the adoption of Baby S. R. at 3. Baby S's grandmother consented to the adoption, but the Quinault Nation opposed. R. at 3. The Quinault Nation told CPS that it had found two potential adoptive families for Baby S who were members of the Quinault Tribe in another state. R. at 3.

In June 2020, after learning about the Quinault Nation's proposition, the Donahues and the state of West Dakota filed suit in the United States District Court for the District of West Dakota against the United States of America, the Department of the Interior, and the Secretary of the Interior, Stuart Ivanhoe. R. at 4. The Plaintiffs claimed that sections 1912, 1915, and 1951 of ICWA violated the anticommandeering doctrine of the Tenth Amendment, and that sections 1913, 1914, and 1915 of ICWA violated the Equal Protection Clause of the Fourteenth Amendment. R. at 4. The parties filed cross-motions for summary judgment in September 2020. R. at 4. The United States District Court for the District of West Dakota granted the Defendants' motion for summary judgment, holding that the provisions of ICWA do not violate the Tenth Amendment's anticommandeering doctrine, and also do not violate the Fourteenth Amendment's Equal Protection Clause. R. at 12.

The Donahues and the State of West Dakota appealed to the United States Court of Appeals for the Thirteenth Circuit. R. at 13. The Court of Appeals reversed the decision of the District Court and remanded for judgment in favor of the Plaintiffs, holding that the listed provisions of ICWA violated both the Tenth Amendment's anticommandeering doctrine and the Fourteenth Amendment's Equal Protection Clause. R. at 17, 19.

The United States Supreme Court granted Ivanhoe's petition for writ of certiorari. R. at 20. For the foregoing reasons, Petitioner respectfully asks this Court to reverse the judgment of United States Court of Appeals for the Thirteenth Circuit and remand for further proceedings.

SUMMARY OF THE ARGUMENT

The Indian Child Welfare Act (ICWA) is a federal law that regulates the removal and placement of American Indian children. Congress through ICWA established federal standards that must be met in legal proceeding relating to the placement of Indian children and ensures that Indian tribes are allowed to participate in such proceedings. Congress found that the removal of Indian children from Indian culture represented a threat to the continued existence and integrity of Indian tribes. The Constitution grants Congress broad authority over Indian tribe affairs through the Indian Commerce Clause and Treaty Clause. This power historically has been seen as exclusively belonging to the federal government because of the tension between the states and Indian tribes. Congress has been entrusted with an obligation to protect the Indian tribes and Individuals. Congress through ICWA conferred rights upon Indian tribes and families involved in child custody proceeding through placement preferences and recordkeeping provisions. State courts are the primary mechanism for ensuring these rights. ICWA presents a valid execution of federal preemption through a conferral of rights upon private actors.

The classifications of the Indian Child Welfare Act do not violate the Equal Protection Clause of the Fourteenth Amendment. The relationship between Native American tribes and the United States government has been consistently recognized as political, rather than race-based. As such, federally recognized tribal affiliations are inherently political classifications. Political classifications are subject to rational basis review and will be upheld if they are reasonably and rationally designed to further a legitimate government interest. ICWA's provisions satisfy rational basis review because they are rationally linked to Congress's legitimate goal of protecting the stability and security of Native American tribes. By allowing tribes to make independent decisions regarding tribal membership and the placement of Native American children in tribal households,

ICWA allows Congress to further its legitimate goal of protecting Native American sovereignty and self-government and promote the continued existence and integrity of Indian tribes.

ARGUMENT

I. In passing the Indian Child Welfare Act, Congress properly acted within its broad plenary powers relating to Indians and merely confers rights onto Indian tribes and individuals involved in child custody proceedings.

This Court has consistently upheld the presumption that Congress will pass no act not within its constitutional powers, and the presumption will prevail unless lack of constitutional authority to pass the act in question is clearly demonstrated. United States v. Harris, 106 U.S. 629, 635 (1883). The anti-commandeering doctrine stands for the principle that Congress is empowered to exercise its authority over individuals, not states. New York v. United States, 505 U.S. 144, 147 (1992). The anti-commandeering doctrine is rooted in the Tenth Amendment, which states that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X. However, under the Supremacy Clause, Congress is still free to displace state law which conflicts with a federal conferral of rights upon private individuals. Murphy v. Nat'l Collegiate Athletic Ass'n, 138 S. Ct. 1461, 1479 (2018). State law is preempted even without an express provision for preemption to the extent that any conflicts exist. Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 364 (2000).

A law is a valid exercise of federal preemption and not impressible commandeering if the two prongs established in Murphy are satisfied: (1) Congress must act with power conferred on congress by the constitution and (2) the law must be best read as one that regulates private actors, not states. 138 S. Ct. at 1479. It is important to note that a law does not fail the second inquiry simply because it also regulates states that participate in an activity in which private parties engage. Id. at 1478. The key question is whether the law establishes rights enforceable by or against private

parties. Morales v. Trans World Airlines, Inc., 504 U.S. 374, 391 (1992). The ICWA satisfies both prongs established by this Court in Murphy.

A. Congress has broad plenary and exclusive powers to pass legislation relating to the affairs of Indian tribes

The Constitution grants Congress broad general powers to legislate with respect to Indian tribes, powers that this Court has described as "plenary and exclusive." United States v. Lara, 541 U.S. 193, 200 (2004) (noting that the Indian Commerce and Treaty Clauses together are sources of Congress's "plenary and exclusive" "powers to legislate in respect to Indian tribes"). This power has historically been characterized in the broadest possible terms. Id.; Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 (1978) (noting that Congress' authority over Indian matters is extraordinarily broad). Congress's authority over Indian affairs is granted 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). Congress has further been entrusted with a duty of protection over the Indian tribes who have been considered wards of the nation. United States v. Kagama, 118 U.S. 375, 384 (1886). Chief among the threats to the Indian tribes are the states and their inhabitants. Id. Indian tribes owe no allegiance to the states and receive from them no protection. Id. Because of this, the people of the states where the tribes are located are their deadliest enemies, which Congress must protect against. Id.; Lummi Indian Tribe v. Whatcom Cnty., Wash., 5 F.3d 1355, 1358 (9th Cir. 1993) (upholding the Indian Intercourse Act whose purpose was to protect Indians from the "greed of other races"). Because of this reality, the Constitution displaces the states from having any role in the affairs and "divested [them] of virtually all authority over Indian commerce and Indian tribes." Seminole Tribe of Florida v. Florida, 517 U.S. 44, 62 (1996). The Framers entrusted exclusive and supreme authority to the federal government over Indian affairs, including the power to prevent states from interfering with federal policy towards the Indians. See

McGirt v. Oklahoma, 140 S. Ct. 2452, 2463 (2020) ("The policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation's history."). No court has found Congress's exercise of power improper when Congress has invoked its duty to the tribes and enacted a law clearly aimed at keeping its enduring obligation to the Indian tribes. Brackeen v. Haaland, 994 F.3d 249, 303 (5th Cir. 2021).

Congress passed ICWA "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families." 25 U.S.C.A. § 1902. Congress sought to prevent the severing of Indian children from Indian tribes. See Indian Child Welfare Program: Hearings before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs, 93rd Cong. 3-14 (April 8–9, 1974) (statement of William Byler, Executive Director, Association of American Indian Affairs). Congress further found abusive Indian child custody practices continued at the state level, which lead to the "wholesale" removal of Indian children from their homes by state child welfare agencies and adjudicatory bodies. Indian Child Welfare Act of 1977: Hearing Before the S. Select Committee on Indian Affs., 95th Cong. 320 (1977) (statement of James Abourezk, Chairman, S. Select Comm. on Indian Affs.) (describing the massive removal as resulting in "cultural genocide"). The vast removal of Indian children from their homes and communities was found to be an existential threat to tribes. See 124 Cong. Rec. 38, 103 (1978) (statement of Minority sponsor Rep. Robert Lagomarsino) (stating that the continued removal of Indian children by nontribal government and private agencies constitutes a serious threat to their existence). ICWA clearly furthers Congress's dual goals of protecting the best interests of Indian children and promoting the stability and security of Indian families and tribes. R. at 9.

Thus, ICWA falls within Congress's "plenary powers to legislate on the problems of Indians" in order to fulfill its trust obligations to the tribes. Antoine v. Washington, 420 U.S. 194, 203 (1975).

B. ICWA applies evenhandedly to both private and public actors and confers rights upon Indian tribes and individuals involved in child welfare proceedings.

Congress has no power to directly command state executives and state legislatures to do its bidding. Murphy v. Nat'l Collegiate Athletic Ass'n, 138 S. Ct. at 1479. Instead, Congress is empowered to "exercise its legislative authority directly over individuals rather than over States." Id. However, when considering whether a federal law violates the anticommandeering doctrine, the Supreme Court has consistently drawn a distinction between a state's courts and its political branches. Id. As Justice Scalia made clear in Printz v. United States, "the Constitution was originally understood to permit imposition of an obligation on state judges to enforce federal prescriptions, insofar as those prescriptions related to matters appropriate for the judicial power." 521 U.S. 898, 932 (1997). It has been further noted that although "[f]ederal statutes enforceable in state courts do, in a sense, direct state judges to enforce them, . . . this sort of federal 'direction' of state judges is mandated by the text of the Supremacy Clause." New York v. United States, 505 U.S. at 178. The ICWA, unlike the provisions at issue in Murphy, Printz, and New York, merely uses state courts to enforce private rights and does not instruct the state legislator or executive.

This Court has stressed that a federal regulation is valid as long as it applies evenhanded regulation in an activity in which both states and private actors engage. Id. In Reno, the Court upheld the Driver's Privacy Protection Act which restricted the ability of states and private parties to disclose a driver's personal information without consent. 528 U.S. 141, 151 (2000). The Court reasoned that the Act did not seek to regulate the state's capacity to regulate their own citizens but rather regulated the states as the owners of DMV databases. Id. The Court in Reno further held

that it was critical that the Act applied equally to state and private resellers of motor vehicle information. Id. Much like in Reno, ICWA merely regulates the state's activities when the state chooses to become a party in a foster care placement or the termination of parental rights. Id. Furthermore, ICWA equally regulates private actors who choose to become a party in a foster care placement or termination of parental rights. In South Carolina v. Baker, the Court upheld Section 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 reasoning that the provision did not seek to control or influence the manner in which states regulate private parties but merely regulated a state activity. 485 U.S. 505, 507 (1988). ICWA is best read as regulating an activity in which both private actors and the state engage. ICWA applies to any party, regardless of whether that party is a state agent or private individual. This is true particularly in the case at bar—the Donahues (private actors) and West Dakota (the State) challenge the application of ICWA. R. at 4.

While under § 1915, § 1912(a), and § 1951(a) ICWA imposes obligations on the state courts through a conferral of rights on private individuals, this is not an anti-commandeering issue. This Court has continuously held that no anti-commandeering issue exists when state judges enforce rights granted by federal law. New York v. United States, 505 U.S. at 178. State courts are viewed as distinctive because, unlike legislatures, they apply the law of other sovereigns consistently, including federal law as mandated by the Supremacy Clause. Id. The clearest example of this is when the first Congress required state courts to record applications for citizenship and to transmit citizenship application records to the Secretary of State. Printz, 521 U.S. at 905–06. This analysis does not change simply because the state shifts that obligation from the judicial to some other body. Id. at 905. States are not "pressed into federal service" when they choose to obligate their executive, rather than judicial, officers to implement an otherwise valid federal obligation.

Id. ICWA's provisions are simply procedures needed to ensure Indian rights in child custody procedures. Simply because the State of West Dakota chooses to use agencies distinct from the judicial does not create an anti-commandeering issue where none exists. R. at 15

ICWA was properly passed pursuant to the plenary powers over Indian affairs which Congress possesses exclusive authority over. ICWA further creates rights and restrictions in favor of Indian individuals and tribes through the child custody proceedings involving Indian children. ICWA applies generally and places obligations on parties to the child custody proceeding regardless of whether the parties are private individuals or state actors. Thus, ICWA satisfies the two-prong test set in Murphy and does not violate the anti-commandeering doctrine.

II. **The classifications of the Indian Child Welfare Act do not violate the Equal Protection Clause of the Fifth Amendment because they are politically based classifications that pass rational basis review**.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. The Fifth Amendment prohibits the federal government from depriving any person of life, liberty, or property, without due process of law." U.S. CONST. amend. V. As this Court has noted, the Fourteenth Amendment's equal protection standards have been interpreted as part of the Fifth Amendment's guarantee of due process. See, e.g., Bolling v. Sharpe, 347 U.S. 497, 499 (1954). As such, Fifth Amendment and Fourteenth Amendment guarantees apply to both states and the federal government. Id. at 500.

A. Because ICWA's classifications are politically—and not racially—based, they are subject to rational basis review.

ICWA's classifications are politically based. As such, they are subject to rational basis review.

The relationship between the United States government and Native American tribes has long been recognized as "political, rather than race-based." Kahawaiolaa v. Norton, 386 F.3d 1271, 1278 (9th Cir. 2004). Historically, the tribes have been described as "domestic dependent nations," and have retained their status as political entities. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 16 (1831). The Constitution grants to Congress the power to "regulate commerce with foreign Nations, among the several states, and with the Indian tribes," further suggesting that the Framers have viewed the tribes as sovereign entities from the beginning. U.S. CONST. art. I, § 8.

The Native American tribes reside within the United States and are subject to federal power, but still hold significant sovereignty over matters of self-government—as such, they maintain a "government-to-government relationship with the United States." Brackeen, 994 U.S. at 271. With the passage of the Indian Reorganization Act in 1934, the federal government sought to further solidify the sovereign rights of Native American tribes by authorizing tribes to apply for federally recognized status. Id. at 337. The official federal recognition of Native American tribes constitutes a "formal political act" which "institutionaliz[es] the government-to-government relationship between the tribe and the federal government." Id. (quoting Cal. Valley Miwok Tribe v. United States, 515 F.3d 1262, 1263 (D.C. Cir. 2008)).

This Court has never recognized federal legislation with respect to Native American tribes to be "based upon impermissible racial classifications." United States v. Antelope, 430 U.S. 641, 645 (1977). The federal government's regulation of Native American tribes has never been viewed as "legislation of a racial group" consisting of Native Americans. Id. at 646. Federally recognized tribal affiliations are "inherently political" classifications. Brackeen, 994 U.S. at 337. Tribal affiliation "does not turn on race, but rather on the criteria set by the tribes, which are present-day political entities" Id. This Court has consistently recognized that tribes have the distinct authority

to define tribal membership, and this right is central to their existence as sovereign political entities. Santa Clara Pueblo, 436 U.S. at 72; see Roff v. Burney, 168 U.S. 218, 223 (1897) (recognizing the significance of Indian tribes' right to define their own tribal membership as an element of sovereignty). Tribal affiliation is analogous to the United States, or any sovereign state, "[choosing] to whom it extends citizenship." Brackeen, 994 U.S. at 337-38.

Where a classification is political, rational basis review applies. Morton v. Mancari, 417 U.S. 535, 555 (1974). Under this standard, a law is presumed constitutional and will be upheld if it is reasonably and rationally designed to further a legitimate government interest. Id.

In Mancari, this Court considered whether a hiring preference for American Indians within the Bureau of Indian Affairs violated equal protection principles. 417 U.S. at 537. The hiring practices at issue granted qualified Native Americans preferred hiring and promotions over non-Natives within the BIA. Id. at 538. The Mancari Court found that the hiring preference was designed to "further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups." Id. at 554. Further, this Court noted that the hiring preference was based on a political classification, and not directed towards a "discrete racial group." Id. Rather, the qualifications for this preference provided that "an individual must be one-fourth or more degree Indian blood and be a member of a federally recognized tribe." Id. at 553, n. 24. In practice, this qualification served to exclude "many individuals who are racially to be classified as 'Indians.'" Id. Consequently, the preference was political rather than racial in nature.

In the present case, ICWA's classifications are politically based. ICWA defines "Indian" as "any person who is a member of an Indian tribe." 25 U.S.C. § 1903(3). ICWA also defines an "Indian child" as any unmarried person under the age of eighteen who is the biological child of a member of an Indian tribe and is either (a) a member of an Indian tribe or (b) is eligible for

membership in an Indian tribe. Id. § 1903(4). These classifications relate only to an individual's status as a member of a Native American tribe and their eligibility to become a member of a Native American tribe. 25 U.S.C. § 1903. As "domestic and dependent nations," membership in a tribe constitutes a political affiliation, as opposed to a race-based classification. Cherokee Nation, 30 U.S. at 17. Both Baby C's and Baby S's biological parents are enrolled members of federally recognized tribes: the Quinault Nation and the Cherokee Nation. R. at 2–3. Neither Baby C's nor Baby S's affiliation with these tribes implies a racial classification. In fact, the criteria set by each child's respective tribe—each of which is a "present-day political entity"—is what would determine whether the child is affiliated as a member of the tribe, as opposed to the child's race. Brackeen, 994 U.S. at 337. The Cherokee Nation, for instance, requires the individual to prove that they are directly connected to "an enrolled lineal ancestor who is listed on the 'Dawes Roll' Final Rolls of Citizens and Freedman of the Five Civilized Tribes." *Tribal Registration*, CHEROKEE NATION, https://www.cherokee.org/all-services/tribal-registration/ (last visited Oct. 9, 2022). The Quinault Nation requires one-fourth heritage from a combination of tribes. CONST. OF THE QUINAULT INDIAN NATION, art. II, § 1. Nearly all the tribes require a direct application by the individual. Id. Here, ICWA grants to Native American tribes, as sovereign political entities, the ability extend tribal affiliation on the basis of a purely political classification.

Like the hiring preference in Mancari, ICWA's provisions are politically based. As this Court stated Rice v. Cayetano, although the Mancari "classification[s] had a racial component, the Court found it important that the preference" was connected to a political group rather than a racial group. Rice, 528 U.S. 495, 519 (2000). The ICWA's definition of Indian Child explicitly states the political qualification: eligibility for membership in a Native American tribe. 25 U.S.C. § 1903(4). As the Cherokee and Quinault requirements show, tribal heritage does not guarantee

eligibility to a tribe, and therefore does not guarantee eligibility in the ICWA classifications. Consequently, like the classifications in Mancari, the contested ICWA provisions "operate[] to exclude many who are racially classified as Indians." Id at 553, n. 24. "In this sense, the preference is political rather than racial in nature." Id. As such, the classifications are political, and this Court should apply the rational basis test.

Since ICWA's classifications are political, rational basis review applies, and the law should be upheld if it is reasonably and rationally designed to further a legitimate government interest. Mancari, 417 U.S. at 555.

B. ICWA's provisions pass rational basis review because they are reasonably designed to further a legitimate government interest.

ICWA is presumed constitutional, and its provisions in §§ 1913–1915 survive the low threshold of rational basis review because they are rationally linked to Congress's legitimate goal of protecting the stability and security of Native American tribes.

This country's former policies towards the Native Americans are succinctly stated in Richard Pratt's infamous statement, "kill the Indian in him, and save the man." "The Advantages Of Mingling Indians With Whites" (Speech at the National Conference of Charities and Correction) (Denver, CO: United States, 23–29 June 2006). As this Court has recognized, the United States government and the Native American tribes have assumed a relationship under which the tribes hold themselves to be "under the protection of the United States." Worcester v. Georgia, 31 U.S. 515, 552 (1832). "Protection does not imply the destruction of the protected." Id. In this relationship, the federal government possesses "the authority to do all that [is] required to perform that obligation and to prepare the Indians to take their place as independent, qualified members of the modern body politic." Board of County Comm'rs v. Seber, 318 U.S. 705, 715 (1943).

Before the ICWA was passed, an estimated 25 to 35% of all Native American children had been placed in adoptive homes, foster homes, or institutions. H.R. Rep. No. 95-1386 at 9. Around 85% of these children were being raised by non-native families. Id. Congress enacted ICWA in response to an "alarmingly high percentage" of reports of Native American children being separated from their tribes and families through adoptions into non-Native American foster and adoptive homes. 25 U.S.C. § 1901(4). ICWA recognizes Congress's unique relationship with Native American tribes and its assumption of a "responsibility for the protection and preservation of Indian tribes and their resources." Id. § 1901(2). ICWA explicitly states Congress's legitimate purpose, providing that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." Id. § 1901(3). ICWA further establishes that "the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe." Id. Congress's stated goal is "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families," and uses the standards in ICWA to further this purpose. Id. § 1902. This Court has recognized that "ICWA's substantive provisions must . . . be seen as a means of protecting not only the interests of individual Indian children and families, but also of the tribes themselves." Miss. Band of Chocktaw Indians v. Holyfield, 490 U.S. 30, 50 (1989).

In the present case, ICWA's provisions illustrate Congress's legitimate goal of protecting the continued existence and integrity of Native American tribes and their children. Section 1913 of ICWA allows Native American parents, in voluntary proceedings, to withdraw consent for any reason before a final decree of adoption or termination of parental rights. R. at 6; 25 U.S.C. § 1913. Section 1914 of ICWA gives Indian children, parents, custodians, or the child's tribe the right to file a petition to invalidate state court actions for foster care placement or termination of parental

rights. R. at 6; 25 U.S.C. § 1914. Similar to the hiring preference in Mancari, allowing a child's tribe or their parents (who are directly affiliated with the tribe) to give or withdraw consent in child custody proceedings and to invalidate state court actions furthers the cause of "Indian self-government." 417 U.S. at 554. Further, like the hiring preference in Mancari, the classifications in ICWA's provisions promote a non-racially based goal: that is, the goal of furthering Native American sovereignty and self-government. Id. These provisions of ICWA reflect the federal government's interest in promoting the sovereignty of Native American tribes by affording to tribes the right to make decisions on their own matters regarding their own children—the resource recognized as most "vital to the continued existence and integrity of Indian tribes." 25 U.S.C. § 1901(3).

Respondents may argue that the Mancari holding was specifically cabined to the cause of Indian self-government within the BIA. This Court has upheld legislation that singles out Native Americans for special treatment in a variety of circumstances. See Mancari, 417 U.S. at 552 ("Literally every piece of legislation dealing with Indian tribes and reservations . . . singles out for special treatment a constituency of tribal Indians living on or near reservations."). This Court has consistently held that these laws do not violate the Fifth Amendment. See Antelope, 430 U.S. at 645 ("The decisions of this Court leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classifications."); see also Seber, 318 U.S. at 705 (federally granted tax immunity); McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973) (federally granted tax immunity); Simmons v. Eagle Seelatsee, 384 U.S. 209 (1966) (statutory definition of tribal membership, with resulting interest in trust estate); Williams v. Lee, 358 U.S. 217 (1959) (tribal courts and their jurisdiction

over reservation affairs); Morton v. Ruiz, 415 U.S. 199 (1974) (federal welfare benefits for Indians "on or near" reservations).

Further, section 1915 of ICWA provides that in foster care, pre-adoptive, and adoptive proceedings, "a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families." R. at 6; 25 U.S.C. § 1915(a). This provision of ICWA ensures that Native American children will be raised in households that are likely to share Native American customs, values, and traditions. A preference for placing Native American children in such households is likely to encourage the child to maintain their ties with their tribe and culture. Greg O'Brien, Chickasaws: The Unconquerable People, Mississippi History Now (Sept. 23, 2020, 9:20 AM), https://mshistorynow.mdah.state.ms.us/articles/8/chickasaws- the-unconquerable-people. As discussed above, Congress has a legitimate interest in "promoting the stability and security of Indian tribes and families," and has historically assumed a protective relationship with Native American tribes in an effort to further this interest. Worcester, 31 U.S. at 552. ICWA's preference for Native American households in Section 1915 allows Congress to exercise this protective authority without "the destruction of the protected." Id. In fact, Section 1915's placement preference is designed to promote the vitality of "the protected" by giving tribes the right to maintain and continue ties between their cultural traditions and their children.

As applied to Baby C and Baby S, ICWA's provisions satisfy rational basis review. The designation of the Quinault Nation as Baby C's tribe for the purposes of the state proceedings allows the tribe to exercise its right to self-government and illustrates how ICWA protects the tribe's interest in doing so by independently defining Baby C's tribal affiliation, which is a purely political classification. R. at 3. Additionally, the Quinault Nation intervened in Baby S's adoption

proceeding and opposed Baby S's adoption by the Donahues in favor of two potential adoptive families who were part of the Quinault Nation. R. at 3. In exercising the placement preference under Section 1915 of ICWA, the Quinault Nation seeks to promote the maintenance of their tribe's customs and values by placing Baby S in a tribal household. Congress's explicit purpose in implementing ICWA was to promote the stability of Indian tribes and families through the protection of their children, whose welfare is "vital to the continued existence and integrity of Indian tribes." 25 U.S.C. § 1901(3). As applied to the present case, ICWA's provisions pass rational basis review because they are designed to further Congress's legitimate purpose of protecting children like Baby C and Baby S, as well as the stability of tribes like the Quinault Nation.

ICWA's provisions satisfy rational basis review because they are reasonably designed to further Congress's legitimate goal of protecting the stability and security of Native American tribes.

CONCLUSION

For the foregoing reasons, Petitioner respectfully asks this Court to reverse the judgment of United States Court of Appeals for the Thirteenth Circuit and remand for further proceedings.

CERTIFICATE OF SERVICE

I certify that a true copy of this brief was furnished to counsel for Respondent by hand delivery on this 10th day of October 2022.

_____

Team 22
Counsel for Petitioner