No. 12-399

In The

Supreme Court of the United States

ADOPTIVE COUPLE,

Petitioners,

v.

BABY GIRL, a minor under the age of fourteen years, BIRTH FATHER, and THE CHEROKEE NATION,

Respondents.

On Petition For A Writ Of Certiorari To The South Carolina Supreme Court

BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND THE COUNTY WELFARE DIRECTORS ASSOCIATION OF CALIFORNIA AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

JOHN F. WHISENHUNT,
County Counsel
LILLY C. FRAWLEY,
Deputy County Counsel
Counsel of Record
COUNTY OF SACRAMENTO
JUVENILE DEPENDENCY DIVISION
3331 Power Inn Road, Suite 350
Sacramento, CA 95826
Telephone: (916) 875-6877
Facsimile: (916) 875-7020
frawleyl@saccounty.net

JENNIFER B. HENNING
Litigation Counsel
CALIFORNIA STATE ASSOCIATION OF COUNTIES
1100 K Street, Suite 101
Sacramento, CA 95814
Telephone: (916) 327-7500
Facsimile: (916) 443-8867
jhenning@coconet.org

Counsel for Amici Curiae

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND THE COUNTY WELFARE DIRECTORS ASSOCIATION OF CALIFORNIA AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS[1]

The California State Association of Counties ("CSAC") and the County Welfare Directors Association of California ("CWDA") submit this brief in support of petitioners.

The *amici* have an interest in this case because the decision of the South Carolina Supreme Court creates conflicts in case law defining the federal rights of an unwed father under the Indian Child Welfare Act (ICWA). By deepening the existing conflict in the courts, the decision increases the difficulty for the *amici* to discharge their responsibility for protecting children in California.

Petitioners identified two issues pertinent to voluntary adoptions that have sharply divided state courts. Pet. 11-21. The issues presented in this case, however, overlap into the area of involuntary child custody proceedings, and the *amici* write separately

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[1] No counsel for a party authored this brief in whole or in part. No person or entity other than *amici*, its counsel or its members made any monetary contribution intended to fund the preparation or submission of this brief. Letters from the parties consenting to the filing of this brief have been filed with the Clerk of the Court. Counsel of record provided the required notice to the parties at least ten days before the filing deadline for this brief.

to focus on the constitutional and statutory rights of children in that context.

INTERESTS OF THE *AMICI CURIAE*

CSAC is a nonprofit corporation, the membership of which consists of the 58 California counties. CSAC sponsors a Litigation Coordination Committee, which is administered by the County Counsels' Association of California. CSAC is overseen by the Association's Litigation Overview Committee. The committee, which is comprised of county counsels throughout the state, monitors litigation of concern to counties statewide. Because the committee determined that this case involves issues affecting all California counties, the committee voted *unanimously* to provide *amicus* support to petitioners.

CWDA is a nonprofit association representing the human service directors from each of California's 58 counties. The Association's mission is to promote a human services system that encourages self-sufficiency of families and communities, and protects vulnerable children and adults from abuse and neglect. CWDA represents the county agencies that administer the child welfare and foster care programs on behalf of the State and are thus directly impacted by this case.

CSAC's representation includes agencies in California charged with the protection of children who are dependents of the juvenile court in their

respective counties; and CWDA's mission is to protect children from abuse and neglect.

This case has special interest to the *amici* because California has the largest population of Native American Indians in the United States.[2] California also has a high number of juvenile dependency appeals involving ICWA compliance issues.[3] Furthermore, there is a large population of children in California who are living in foster care.[4]

Due to California's demographics, the *amici's* responsibility for protecting juvenile dependent children with Indian ancestry has become increasingly challenging. The responsibility has also become unnecessarily difficult due to confusion created by conflicting judicial interpretations of the ICWA requirements.

This case has added confusion to the implementation of an area of the law with widespread interest.

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[2] According to the 2010 Census, California had the largest percentage (14 percent), followed by Oklahoma. U.S. Census Bureau, *The American Indian and Alaska Native Population: 2010*, p. 6, 2010 Census Briefs, http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf (last visited Oct. 21, 2012).

[3] A Westlaw search in the California database, conducted on October 21, 2012, yielded 2441 documents using the following query: "Indian Child Welfare Act." Another search yielded 1419 documents by including "+ reversed" to the aforementioned query.

[4] In July 2009, approximately 53,000 children in California were living in foster care under the supervision of child welfare departments. *In re W.B., Jr.,* 281 P.3d 906, 913 n.4 (Cal. 2012).

Although the South Carolina decision concerns a *voluntary* adoption proceeding, the questions presented are vital in *every* proceeding involving dependent children in the juvenile court system, initiated by child protection agencies throughout California. These cases include *involuntary* termination of parental rights proceedings.

Because juvenile court dependency cases often involve interstate transfers, the South Carolina Supreme Court's decision increases the *amici's* difficulties to discharge their responsibility for protecting children in California. Confusion regarding compliance with the ICWA has delayed permanency for children, taxed limited resources, and created a proliferation of appeals involving children with Native American Indian ancestry. By preventing them from achieving permanency in the least protracted fashion possible, such delays are harmful to young children. Thus, there is an immediate need for this Court to grant review to establish a uniform standard for deciding the threshold ICWA issues presented in the petition for certiorari.

This case is an ideal vehicle for resolving questions that involve important rights. The South Carolina Supreme Court's decision presents two clearly defined issues of widespread importance: (1) Whether a *non*-custodial parent can invoke ICWA to block an adoption voluntarily and lawfully initiated by a non-Indian parent under state law; and (2) Whether ICWA defines "parent" in 25 U.S.C. section 1903(9) to include an unwed biological father who has not complied with

state law rules to attain legal status as a parent. For these reasons, this case is important to the *amici*.[5]

SUMMARY OF ARGUMENT

Compliance with ICWA's requirements has confounded courts throughout the country for over thirty years. Thus, the *amici* agree with the arguments presented in the petition for writ of certiorari. More specifically, the *amici* agree with petitioners' claim that review should be granted because the South Carolina Supreme Court's decision presents two clearly defined legal issues of widespread importance that have divided the state courts. Furthermore, for the reasons stated in the petition, the *amici* agree that the decision was wrongly decided.

The South Carolina Supreme Court erred in two respects: (1) by holding that a *non*-custodial parent can invoke ICWA to block a voluntary adoption; and (2) by holding that a "parent," as defined in 25 U.S.C. section 1903(9), includes an unwed biological father who has not complied with state law rules to attain legal status as a parent.

The South Carolina Supreme Court allowed the biological father to invoke the heightened evidentiary standards pursuant to 25 U.S.C. section 1912(f) – which apply to parental termination proceedings

[5] *See* n.3, *ante*.

involving an Indian child – and held that he had standing to contest the adoption. As such, even though he failed to assume parental responsibilities for his child and instead, abandoned the child, he received rights otherwise denied to similarly situated, non-Indian biological fathers.

In short, by overlooking the fact that the biological father would not have met the qualifications for acknowledging or establishing paternity under South Carolina law, the South Carolina Supreme Court impermissibly created a new federal class of "parents" based on race and genetics. But for the court's novel approach, the heightened evidentiary standards – applicable only to cases involving adoption of Indian children removed from a *custodial* parent – would not have been triggered; and the biological father would not have been provided a second chance to establish parental status.

A biological father's status as a parent affects all adoptions – including those following the involuntary termination of parental rights pursuant to proceedings initiated by child protection agencies. Because the questions in this case arose in the context of a family court proceeding, petitioners understandably focus on whether the unwed biological father was a parent for purposes of determining whether his consent was required for a voluntary adoption. The *amici* address the rights of children to emphasize the need for a uniform approach for applying ICWA requirements in a manner that best serves the interests of Indian children.

Guidance from this Court is needed to settle the deepening conflicts created by the South Carolina Supreme Court decision. Confusion in the law invites litigation and impedes the ability of courts and social service agencies to promote laudable Congressional goals: preserving Indian culture and protecting the stability of Indian tribes and Indian children.

REASONS FOR GRANTING THE WRIT

I. The South Carolina Supreme Court erroneously expanded the definition of a "parent" under the ICWA, deepening the existing conflict with decisions of other states.

Petitioners have identified two entrenched splits among state courts concerning the application of ICWA. Pet. 11-17. The South Carolina Supreme Court's erroneous expansion of the definition of a "parent" under ICWA 25 U.S.C. section 1903(9) creates a conflict with decisions of other states, including California. The decision's holding that 25 U.S.C. section 1912(f) may be invoked by a *non*-custodial parent also deepens the existing divide. Furthermore, the decision is inconsistent with 25 U.S.C. section 1914, which provides standing to a parent "from whose custody . . . a child was removed."

The South Carolina Supreme Court found irrelevant that father was not a "parent" under state law. While acknowledging that the unwed biological father would not have qualified as a parent under state law

(App. 21a-22a n.19), the majority held that the consideration was irrelevant under ICWA – reaching to allow father to invoke the special parental termination provision pursuant to 25 U.S.C. section 1912(f), which is applicable only to "parents" of Indian children. App. 32a n.26; *accord*, App. 58a (Kittredge, J., dissenting).

In addition to the cases cited in the petition, the South Carolina Supreme Court's decision creates a conflict with California case law. For example, the California Supreme Court has held that to attain full statutory rights as a parent in a proceeding, the biological father must attain presumed father status (*In re Zacharia D.*, 862 P.2d 751, 762 (Cal. 1993) or demonstrate he is entitled to the same rights as a presumed father under the case of *Adoption of Kelsey S.*, 823 P.2d 1216 (Cal. 1992).

The California Supreme Court has also held that a father has no federal constitutional rights, under either the Equal Protection or Due Process Clauses of the United States Constitution, to withhold consent to an adoption of his child where he fails to demonstrate a prompt and full commitment to parenthood, especially within a short time after he discovered or reasonably should have discovered that the mother was pregnant with his child. *See In re Adoption of Michael H.*, 898 P.2d 891, 901, reh'g denied, Sept. 28, 1995 and cert. denied, 516 U.S. 1176, 116 S. Ct. 1272, 134 L. Ed. 2d 219 (1996). Nothing in ICWA demonstrates Congressional intent to abandon this federal standard.

Citing 25 U.S.C. section 1903(9), a California appellate court explained: "The ICWA defines 'parent' as 'any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child. . . . ' [Citation.] The ICWA expressly excludes from the definition of 'parent' an 'unwed father where paternity has not been acknowledged or established.'" *In re Daniel M.*, 1 Cal. Rptr. 3d 897, 899 (Cal. Ct. App. 2003) "[B]ecause the ICWA does not provide a standard for the acknowledgment or establishment of paternity, courts have resolved the issue under state law. [Citations.] Courts have held an unwed father must take some official action, such as filing a voluntary declaration of paternity, establishing paternity in legal proceedings, or petitioning to have his name placed on the child's birth certificate. [Citations.]" *Ibid.*

It is, thus, well-settled in California that an unwed biological father would not be accorded standing under the facts of this case, where the biological father had abandoned Baby Girl and did not have custody of the child. *See In re Ariel H.,* 86 Cal. Rptr. 2d 125 (Cal. Ct. App. 1999).

In *Ariel H., supra,* the prospective adoptive parents brought a petition to determine whether [the] unwed fifteen-year old biological father's consent was required for adoption. *Ariel H., supra,* 86 Cal. Rptr. 2d 125. Even though the biological father avoided making even minimal efforts to assume responsibilities until after the child was born, when his parents were served with adoption papers, he

sought to prevent the adoption by filing a complaint to establish parental rights and obtain custody. *Id.* at 126.

During the proceedings below, the biological father in *Ariel H., supra,* presented no evidence that he was entitled to presumed father status under California Family Code section 7611, subdivision (d). *Ariel H., supra,* 86 Cal. Rptr. 2d at 127-128. Thus, the trial court terminated his parental rights, after determining that he was not the presumed father and his consent to the action was unnecessary. *Id.* at 26.

Even though he never saw the child nor did he publicly acknowledge his paternity, the biological father in *Ariel H., supra*, appealed. *Ariel H., supra,* 86 Cal. Rptr. 2d at 126. On appeal, he tried to excuse his inaction by citing his own minority, an argument which the appellate court rejected. *Id.* at 128. The appellate court affirmed. *Id.* at 128.

The *amici* concur with petitioners' view that an unwed biological father must establish paternity under state law to have standing as a "parent" under ICWA to obstruct a voluntary adoption.[6] The South

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[6] As stated in the petition, "Congress . . . intended that parenthood for unwed fathers would be limited to those who showed the requisite support under state law." *See* Pet. 22 (further noting that "ICWA does not set forth any procedures by which an unwed father must sufficiently 'acknowledge' or 'establish' paternity to present his parental rights"); *see also* Pet. 21 (The ICWA definition of "a parent" found in 25 U.S.C. section 1903(9) should be read as "incorporating a state's definition of

(Continued on following page)

Carolina Supreme Court's decision incorrectly decided that a different standard applies to an unwed biological father who has Native American Indian ancestry.

Furthermore, the *amici* concur with petitioners' view that even assuming the biological father was a "parent" under the ICWA, the majority "separately erred in holding that ICWA's parental termination provision 25 U.S.C. § 1912(f)" may be invoked by "a *non*-custodial parent." Pet. 25. *Cf. In the Matter of S.C. and J.C., Minors,* 833 P.2d 1249 (Okla. 1992), overruled by statute as stated in *Leatherman v. Yancey* (*In re Baby Boy L.*), 103 P.3d 1099 (Okla. 2004) (After non-Indian mother's parental rights in children were terminated, Indian father filed motion to invalidate foster care based on alleged violation of the ICWA. The trial court refused to invalidate the foster placement, and father appealed. The Court of Appeals affirmed. The Supreme Court granted certiorari and held that ICWA does not permit noncustodial Indian parent to invalidate state court ruling on foster care placement.). First, as petitioners explained, the majority failed to consider equal protection principles implicated by its grant of preferential custodial rights to a *non*-custodial father based on his Native American Indian ancestry. *See* Pet. 26-27 (noting that the relevance of the "Existing Indian Family" doctrine ("EIF") in saving ICWA from constitutional

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parenthood for unwed biological fathers."). The *amici* also concur with petitioners' view that whether father is a "parent" is the "threshold question." Pet. 21; *see also* Pet. 21-24.

infirmity). Second, acknowledging a long-established split in the state courts of last resort on the applicability of the EIF, in a footnote, the majority summarily rejected the doctrine. App. 17a-18a n.17.

As petitioners noted, "ICWA . . . represents a rare entry by the federal government into substantive family law, which has long been the exclusive domain of state law." Pet. 4. The South Carolina Supreme Court misinterpreted that entrée as an authorization to re-define who is a "parent" for purposes of family court, juvenile court, and other state court proceedings involving child custody.

Mere biology is insufficient to confer rights to an unwed father who has not acknowledged or established paternity by assuming a parental role. In *Lehr v. Robertson*, 463 U.S. 248 (1983), cited by petitioners, this Court held that failure to give putative father notice of adoption proceedings did not violate due process where he had never established a substantial relationship with his child. *Lehr v. Robertson*, 463 U.S. 248, 260.

The ICWA defines "parent" as "any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom." (25 U.S.C. § 1903(9).) The ICWA expressly excludes from the definition of "parent" an "unwed father where paternity has not been acknowledged or established." *Ibid.* Congress included the exception in the definition of "parent" to exclude biological fathers, such as

the one in the present case, who evaded involvement before and during the mother's pregnancy, and who abandoned his parental responsibilities.

A different definition of a "parent" should not be established for an unwed, biological father merely because he has Native American Indian ancestry. Had Congress meant to extend federal rights to *all* biological parents of an Indian child, "'it knew how to use express language to that effect.'" *Williams v. Florida*, 399 U.S. 78, 97 (1970).

II. The questions presented in this case have widespread importance to individuals, as well as to social service agencies responsible for the protection of children.

For the reasons set forth in the petition, the *amici* agree with their position that the South Carolina Supreme Court's interpretation of the ICWA was wrong. *See* Pet. 21-27. In the *amici's* view, the petition for writ of certiorari should be granted to allow this Court to review the decision, which impedes rather than elucidates proper application of the ICWA. Even more troubling, by creating additional confusion, the case will further delay permanency for children while legal practitioners and lower courts struggle to apply or distinguish it.

In this case, *had* the trial court found that the biological father was not a "parent," the proceeding for adoption would have been voluntary as to the birth mother; and as such, the tribe would not have

been entitled to notice and intervention pursuant to 25 U.S.C. section 1912.

An erroneous paternity determination has far-reaching effects because states must give full faith and credit to paternity determinations by sister states. (*See, e.g.,* 42 U.S.C. § 666(a)(5)(C)(iv).) Since juvenile dependency cases often involve inter-state transfers, the *Amici* have a special interest in this case. *See, e.g., In re Mary G.*, 59 Cal. Rptr. 3d 703, 723 (Cal. Ct. App. 2007) (citing U.S.C.A. Const. Art. 4, section 1, the court reversed, holding that paternity affidavit signed by father in another state, which had the same force and effect as a judgment in that state, was entitled to full faith and credit in California pursuant to the Constitution's Full Faith and Credit Clause, as well as California Family Code section 5604 providing that out-of-state paternity declarations have the same effect as a paternity declaration in California; thus, out-of-state paternity acknowledgement qualified father for presumed father status in California and reunification services as a matter of right).

Review is urgent. As one of the dissenting justices noted, "almost forty years [following the enactment of ICWA], in struggling with the human reality of implementing ICWA, courts frequently face competing tensions. . . ." Pet. App. 54a (Kittredge, J., dissenting). "Despite . . . conflicts among the states, there have been no amendments to the ICWA. In addition, the United States Supreme Court has issued only one decision interpreting the ICWA in the [nearly forty]

years since it became effective." *State ex rel. C.D.*, 200 P.3d 194, 197 (Utah Ct. App. 2008), citing *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989).

III. The South Carolina Supreme Court's decision overrides consideration of a child's best interests in custody determinations involving children with Native American Indian ancestry.

Having erroneously concluded that the biological father had standing to block the adoption because he had Indian ancestry, the South Carolina Supreme Court erred again by concluding that application of ICWA ipso facto trumps the best interests of the child. Thus, review is also needed to establish a national standard to provide guidance to social service agencies, legal practitioners, and the courts construing ICWA's definitions and requirements.

The United States Supreme Court has issued several opinions establishing that children have constitutionally protected rights. *See, e.g., Roberts v. United States Jaycees,* 468 U.S. 609, 617-618 (1991) ("certain intimate human relationships" must be "secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme"; and among these "intimate human relationships" is the creation and sustenance of a family" (*id.* at 617-619); and accordingly, these relationships are granted "a substantial measure of

sanctuary from unjustified interference by the State." *Id.* at 618); *see also In re Gault,* 387 U.S. 1, 13 (1967); *Troxel v. Granville,* 530 U.S. 57, 89, n.8 (2000) (dis. opn. of Stevens, J.).[7]

Even if children did not have constitutional rights, California courts have held that application of the EIF is necessary to limit ICWA to avoid constitutional flaws. (*See, e.g., In re Bridget R.*, 49 Cal. Rptr. 2d 507, 516 (Cal. Ct. App. 1996); *In re Alexandria Y.*, 53 Cal. Rptr. 2d 679, 686 (Cal. Ct. App. 1996); *In re Santos Y.*, 112 Cal. Rptr. 2d 692, 715 (Cal. Ct. App. 2001).

Without regard to the question of whether the biological father was an Indian "parent," by focusing exclusively on his rights as an Indian, the majority's erroneous interpretation and application of the ICWA rendered Baby Girl's best interest wholly irrelevant to the case. *See* Pet. App. 54a-55a (Kittredge, J., dissenting) (criticizing "the majority's approach of

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[7] While the United States Supreme Court has reserved the issue of deciding the nature of a child's liberty interests in preserving established familial or family-like bonds (*Michael H. v. Gerald D.*, 491 U.S. 110, 130 (1989)), the California Supreme Court has declared that "[c]hildren . . . have fundamental rights – including the fundamental right . . . to 'have a placement that is stable, [and] permanent.'" *In re Jasmon O.*, 8 Cal. 4th 398, 419 (Cal. 1994) (recognizing that "children are not simply chattels belonging to their parent, but have fundamental interests of their own"); *see also In re Bridget R., supra*, 49 Cal. Rptr. 2d at 1490 (children's interests are of constitutional dimension)).

applying ICWA in a rigid, formulaic manner without regard to the facts of the particular cases and the best interests of the Indian child"); *see also id.* at 70a (Kittredge, J., dissenting) n.56 ("It is clear to me from the totality of the majority's analysis that its application of ICWA has eviscerated any meaningful consideration of Baby Girl's best interests, despite its lip service to this settled principle.").

Although Justice Kittredge did not consider "the portions of the Guardian *ad Litem's* report going to the ultimate issues to be decided," the Justice nonetheless made his own, "separate[ ] and independent[ ]" findings of Baby Girl's best interest. *Id.* at 51a, n.44.

The majority acknowledged that if the ICWA does not apply, then the biological father's abandonment of Baby Girl extinguished his standing to contest the adoption. Pet. App. 21a n.19, 24a. Notwithstanding its recognition that South Carolina state law would not even recognize the biological father as a parent with standing to challenge the adoption, the majority invoked the ICWA's special parental termination provision for "Indian parents" to give him standing. *Id.* at 21a-22a. As Justice Kittredge noted in his dissenting opinion, "the decision of the family court judge was influenced to some extent by the erroneous legal conclusion that ICWA eclipses the family court's obligation to determine what would be in the child's best interests." Pet. App. 70a (Kittredge, J., dissenting).

In the absence of any other decision in which this Court has construed the requirements of ICWA, the majority turned to *Holyfield, supra,* 490 U.S. 30. That case did not involve a voluntary adoption proceeding, and the case addressed an entirely separate provision of ICWA than at issue here. *See Holyfield*, 490 U.S. at 36 (addressing 25 U.S.C. section 1911(a) and its application to tribal jurisdiction over child custody proceedings involving Indian children domiciled on tribal land). The majority in the present case nonetheless misconstrued the narrow holding in *Holyfield* by "conflat[ing] the . . . controlling feature of substantive law regarding the protection of an Indian child's best interests to justify its rigid view of ICWA's exclusive dominance in every realm. . . ." Pet. App. 61a-62a n.48 (Kittredge, J., dissenting) ("Unlike the majority, my view is predicated upon the guiding principle that '[t]he welfare and best interests of the child are paramount in custody disputes.' [Citations.] Thus, 'ICWA's applicability does not mean that ICWA *replaces* state law with regard to a child's best interests.' [Citations.]" (emphasis added by Kittredge, J.).

Furthermore, as Justice Kittredge noted, the majority also "misapprehend[ed]" *Holyfield* by finding that the case supports the majority's interpretation that "it would be inappropriate to consider the bonding that occurred between Baby Girl and [Petitioners]

during litigation." Pet. App. 81a, n.62 (Kittredge, J., dissenting).[8]

The majority's holding regarding active efforts – that such efforts must be provided even when a parent unilaterally abandons his rights and responsibilities – is inconsistent with fundamental federal and state law, which recognizes the principle that the law does not require idle acts. *See, e.g., Vigil v. Tansy,* 917 F.2d 1277, 1279 (10th Cir. 1990); *Weaver v. Ewers,* 195 F. 247, 249 (8th Cir. 1912); *Letitia V. v. Superior Court,* 97 Cal. Rptr. 2d 303 (Cal. Ct. App. 2000.)

The South Carolina Supreme Court's approach to ICWA analysis is inconsistent with California case law. When the California court of appeal considered a similar issue in *In re William G.*, 107 Cal. Rptr. 2d 436 (Cal. Ct. App. 2001), the court held that ICWA does not require the performance of unreasonable or impossible services to maintain the family. *Id.* at p. 439 ("The Act requires that active efforts be made to provide services, not that services be provided

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[8] *Cf.* In *Holyfield, supra*, 490 U.S. 30, the United States Supreme Court acknowledged the effects of the passage of time on the lives of young children:

> We are not unaware that over three years have passed since the twin babies were born and placed in the Holyfield home, and that a court deciding their fate today is not writing on a blank slate in the same way it would have in January 1986. Three years' development of family ties cannot be undone, and a separation at this point would doubtless cause considerable pain. (*Holyfield, supra*, 490 U.S. at 53.).

regardless of when a parent becomes available to receive those services."); *see also In re Hannah S.*, 13 Cal. Rptr. 3d 338, 612 (Cal. Ct. App. 2004) (finding party seeking termination of parental rights was not required to make active efforts based on father's abandonment and felony convictions resulting in a prison term.) Review would settle this confusion by providing this Court the opportunity to address either of the issues raised in the petition.

Furthermore, the South Carolina Supreme Court decision overlooks an important Congressional goal, which this Court long ago recognized: ICWA was enacted for the purpose of preventing "harm to Indian parents and their children who were *involuntarily* separated by decisions of local welfare authorities." *Holyfield*, *supra*, 490 U.S. at 34 (emphasis added). Even though this case did not involve an involuntary separation, or a decision by a governmental agency, without addressing whether Baby Girl's interests would be best served through adoption by the only caregivers she has ever known, the majority summarily concluded: "ICWA presumes that placement within its ambit is in the Indian child's best interests." Pet. App. 39a. The decision conflicts with well-settled case law that recognizes a child's compelling right to permanence and stability.

Review is urgent because litigation attempting to either apply or distinguish the South Carolina decision – and to apply or distinguish the dozens of conflicting state court decisions on the questions presented – will further compromise permanency and

stability for children. Unless review is granted, conflicts in the law regarding a biological father's standing in a voluntary adoption proceeding will remain unresolved. More important, as relevant to *every* child custody adoption proceeding – including involuntary adoption proceedings initiated by child protection agencies throughout the country – the approach by the majority raises a question of national importance: Did Congress intend the ICWA to be applied in derogation of the child's best interests and welfare? Without a uniform standard, the implementation of the laudable goals of the ICWA will continue to confound social service agencies, legal practitioners, and the courts.

CONCLUSION

For the reasons set forth by the petition, and for the additional reasons stated in this brief, the petition for writ of certiorari should be granted.

Respectfully submitted,

JOHN F. WHISENHUNT,
County Counsel
LILLY C. FRAWLEY,
Deputy County Counsel
Counsel of Record
COUNTY OF SACRAMENTO
JUVENILE DEPENDENCY DIVISION
3331 Power Inn Road, Suite 350
Sacramento, CA 95826
Telephone: (916) 875-6877
Facsimile: (916) 875-7020
frawleyl@saccounty.net

JENNIFER B. HENNING
Litigation Counsel
CALIFORNIA STATE
ASSOCIATION OF COUNTIES
1100 K Street, Suite 101
Sacramento, CA 95814
Telephone: (916) 327-7500
Facsimile: (916) 443-8867
jhenning@coconet.org

Counsel for Amici Curiae

California State Association of Counties

County Welfare Directors Association of California

October 31, 2012