HB 200

<TARGET><BILL>HB 200</BILL><SUBJECT>HB 200</SUBJECT><COMM>HHSS29</COMM></TARGET>

THE STATE
of ALASKA
GOVERNOR BILL WALKER

Department of Health and Social Services

OFFICE OF THE COMMISSIONER

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January 20, 2016

The Honorable Paul Seaton
Chair, House Health and Social
Services Committee
Room 106
Alaska State Capitol
Juneau, AK 99801

Dear Representative Seaton:

I am writing to request a hearing in the House Health and Social Services Committee for House Bill 200, Adoption of Child in State Custody, at your earliest convenience.

Attached please find:

- The current version of the bill
- A fiscal note
- Governor's transmittal letter
- Sectional Analysis

Our Office of Children's Services and Legislative Liaison will work with you to answer questions, provide testimony, and generally facilitate the bill's passage through your committee.

We look forward to working with you.

Sincerely,

Valerie Davidson
Commissioner

cc: Darwin Peterson, Legislative Director, Governor's Office

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Governor Bill Walker
STATE OF ALASKA

April 15, 2015

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault:

Under the authority of Article III, Section 18 of the Alaska Constitution, I am transmitting a bill that would allow adoption of a child in State custody as a child in need of aid to be filed and heard as a child-in-need-of-aid proceeding. Additionally, the bill would allow for more flexibility in the form of the petition for adoption.

Under current law, a person seeking to adopt a child who is in the custody of the Department of Health and Social Services (Department) must file a formal petition for adoption under AS 25.23.080 and have the adoption hearing heard in a probate proceeding separate from the child-in-need-of-aid proceeding under AS 47.10, despite the unique nature of child-in-need-of-aid cases. The bill would ensure that proceedings for the adoption of a child adjudicated to be in need of aid to be filed and heard in the existing child-in-need-of-aid proceeding. This would more fully protect the child, and those wishing to adopt the child and would save resources by keeping the child-in-need-of-aid proceeding and the adoption as one court matter. Second, the bill would allow filing of a proxy for a formal petition to better address the needs of Native and non-Native families by setting out in statute alternatives to formal petitions to adopt currently required by State law.

The bill would allow use of a proxy for a formal petition to adopt; the proxy could be filed by a child's relative, tribal member, or other Indian family. A tribal member or relative also could make the request to the Department by telephone, mail, facsimile, electronic mail, or in person. Last, a proxy for a formal petition could be made by the child's tribe or by a tribe in which the child would be eligible to be enrolled. The Department also would have authority to develop regulations to address other instances where a proxy for a formal petition to adopt should be allowed.

These changes would benefit our most vulnerable children by assuring that adoption proceedings for children in need of aid are conducted in the manner most beneficial to Alaska's children and their families.

HOUSE BILL NO. 200

I urge your prompt and favorable action on this measure.

Sincerely,

Bill Walker

Bill Walker
Governor

Enclosure

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: HB 200
Fiscal Note Number:
() Publish Date:

Identifier: HB200-DHSS-FLSW-3-25-16
Title: ADOPTION OF CHILD IN STATE CUSTODY
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: House HSS

Department: Department of Health and Social Services
Appropriation: Children's Services
Allocation: Front Line Social Workers
OMB Component Number: 2305

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2017**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Fund Source (Operating Only)							
None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/17

Why this fiscal note differs from previous version:

Updated to current SLA2016 form.

Prepared By: Christy Lawton, Director — Phone: (907)465-3170
Division: Office of Children's Services — Date: 03/25/2016 08:20 AM
Approved By: Sana Efird, Asst. Commissioner, Finance and Management Services — Date: 03/25/16
Agency: Health and Social Services

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. HB200

Analysis

Under current law, a person seeking to adopt any child in the custody of the department must file a formal petition for adoption. The adoption hearing would then be heard in a probate proceeding, which is separate from Child in Need of Aid proceedings. This creates challenges to the adoption process because a child in need of aid is a unique case. This bill would align adoption of a child in need of aid under AS 47.10 and allow for the department to develop alternatives to the formal adoption petitions that are currently required under AS 25.23.080. This bill will improve department compliance with the Indian Child Welfare Act and support tribal partnerships and efforts. No fiscal impacts are anticipated.

House Bill 200 Sectional Analysis

HB 200, "An Act establishing procedures related to a petition for adoption of a child in state custody; adding a definition of 'proxy for a formal petition'; amending Rule 6(a), Alaska Adoption Rules; and providing for an effective date."

Sectional Analysis:

Section 1	Adds a new section outlining Legislative intent.
Section 2	Adds a new subsection to AS 25.23.030, which states a petition filed for adoption must comply with AS 47.10.111.
Section 3	Adds new subsection AS 47.10.111 stating that the adoption proceedings for a child in state custody, who is considered a child in need of aid, is initiated within child in need of aid proceedings. Proceedings to adopt a child in state custody are initiated by filing a petition under AS 25.23.080 or proxy for a formal petition. This section outlines that "proxy for formal petition" means a request by a relative, tribal member, or other Indian family interested in immediate placement and adoption of a child at any court hearing in a CINA proceeding. Requests for adoption can be submitted in person, through mail or electronic mail, via fax or on the telephone. This subsection allows the department regulatory authority to implement this section.
Section 4	Adds to the Direct Court Rule 6(a)(l) subsection (1) that an adoption petition must include information required by AS 25.23.080, except an exception under (4) of this rule.
Section 5	Adds to the Direct Court Rule 6(a)(1) subsection (4) adding that a proceeding must commence when a formal petition is submitted or the proxy for a formal petition is submitted under the new subsection AS 47.10.111 (b) and shall be heard within the Child In Need of Aid proceeding.
Section 6	Adds uncodified law that if enacted by Section 2 and 3, this act applies to all adoption proceedings filed on or after the effective date of this act.
Section 7	Adds a new section to Regulations allowing Department of Health and Social Services authority to adopt regulations to implement this Act, and that the regulations will take effect not before the effective date of this Act
Section 8	Sets an immediate effective date for section 7 of this Act.

THE STATE of ALASKA
GOVERNOR BILL WALKER

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March 24, 2016 HB 200 Bill Overview

Overview of noted changes of significance from original version "A" to current proposed version "W"

Background:

Version "A" Under current law, a person seeking to adopt any child in the custody of the department must file a formal petition for adoption. The adoption hearing would then be heard in a probate proceeding, which is separate court proceeding from Child in Need of Aid proceedings often with a different judge. This creates challenges to the adoption process because a child-in-need-of-aid is a unique case. This bill would align adoption of a child-in-need-of-aid under AS 47.10 and allow for the department to develop alternatives, such as use of a "proxy", to the formal adoption petitions that are currently required under AS 25.23.080. This bill will improve department compliance with the Indian Child Welfare Act and support tribal partnerships and efforts.

Details:

Version "A" allows for the adoption of a child in state custody, identified as a child-in-need-of-aid, to be filed and heard as a Child-In-Need-of-Aid (CINA) matter.

- Outlines the process by which such adoptions would occur, via petition or proxy for formal petition, via telephone, fax, electronic or regular mail or in person.
- Defines that "proxy by formal petition" includes relative or tribal members, other Indian family interested in immediate placement and adoption of a child.
- Outlines the Legislative Intent to authorize a more appropriate adoption process for a child in state custody to allow adoption proceedings in an existing child-in-need-of-aid proceeding.
- Provides the department regulatory authority to address formal petition of adoption.

Background expanded to include amendments:

Version "W" *This bill would align adoption, guardianship and civil custody matters in Child In Need of Aid cases to be conjoined under AS 47.10, and will assist in preserving placement preferences outlined in 25 U.S.C. 11901 – 1963.* This bill adds much needed flexibility in the initiation of adoption, guardianship, or civil custody proceeding for a child in state

custody and clarifies the need for more appropriate adoption and legal guardian ship processes for an Indian child in state custody under the Indian Child Welfare Act. This bill will improve department compliance with the Indian Child Welfare Act and support tribal partnerships and efforts. This bill will streamline the legal processes, simplify the adoptions and guardianship processes and assist in expediting the goal of finding permanency for Alaskan youth who are subject to Child-in-need-of-aid proceedings

Details:

Version "W" allows for the adoption and guardianship of *all* Alaskan children in state custody, identified as a child-in-need-of-aid, to be filed and heard as a Child In Need of Aid (CINA) matter.

- The conjoining of the adoption, guardianship and civil custody matters where there is action which involves divorce or legal separation proceeds regarding a child in state's custody will create efficiencies in the court system, eliminate barriers and provide for greater access to the extended family members of children subject to CINA proceedings.
- Outlines the process by which such adoptions and guardianships would occur, via petition or proxy for those cases involving children subject to the Indian Child Welfare Act (ICWA) for formal petition, via telephone, fax, electronic or regular mail or in person.
- Defines that "proxy by formal petition" includes relative (native and non-native relatives) or tribal members, other Indian family interested in immediate and permanent placement and adoption of a child who falls under the Indian Child Welfare Act.
- The CS extends the timeline Office of Children's Services has to file a permanent plan with the court after receiving a "proxy" to 60-days from 10 and then provides the court up to 90-days from the date of the filing to hold a hearing to review that plan.
- Provides language that allows the court to hold those petitions or proxies in abeyance until the permanency goal is changed to adoption or guardianship.
- Provides language to clarify the "party status" when the hearings are conjoined to ensure for confidentiality.
- Broadens the scope of individuals that will be entitled to a placement review hearing by creating a definition of "family friend."
- Provides the department regulatory authority to address formal petition of adoption and guardianship.
- Extends the effective date of this bill to give time for Office of Children's Services and the Court System to make the necessary changes.

THE STATE
of ALASKA
GOVERNOR BILL WALKER

Department of
Health and Social Services

OFFICE OF CHILDREN'S SERVICES
Director's Office

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March 30th, 2016

HB 200 Version W

In Summary this bill does the following:

- For all Alaskan families with a child subject to a Child in Need of Aid (CINA) case, this bill will reduce barriers to their participation and expedite the achievement of permanency for the child(ren) by conjoining multiple legal proceedings under one roof.

- A "one judge, one family" concept will save the legal parties, including state agencies such as the Public Defender's Agency, Office of Public Advocacy and Office of Children's Services, time and money by reducing redundancies. Conjoining adoption, guardianship, civil custody and CINA proceedings will streamline the system for families.

- In light of the *Baby Girl* and *Tununak II* decisions, an individual entitled to preference under ICWA's adoptive placement preferences must file a formal petition to adopt the child in order to preserve their placement preference. The proxy procedure provides a less formal mechanism for individuals entitled to preference under ICWA to preserve and apply their placement preference. A proxy is not necessary for children not subject to ICWA because there is no similar formal requirement in state law that an individual entitled to preference must take in order to preserve their preference.

29-GH1262\W
Glover
3/24/16

CS FOR HOUSE BILL NO. 200( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act establishing procedures related to a petition or proxy for adoption or guardianship of a child in state custody; adding a definition of 'proxy for a formal petition'; amending Rules 5 and 6(a), Alaska Adoption Rules, and adding Rule 17.3, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that, because of the number of Alaska Native children in state custody, there is a need to provide an individual seeking immediate permanent placement of an Indian child in state custody with additional flexibility to preserve and apply the placement preferences outlined in the Indian Child Welfare Act (25 U.S.C. 1901 - 1963) with respect to that individual.

(b) It is the intent of the legislature to create mechanisms to achieve permanency for a child in state custody by incorporating adoption, guardianship, or civil custody into ongoing

child-in-need-of-aid proceedings. The legislature does not intend to affect, nor do the provisions of this Act apply to,

(1) a tribal adoption proceeding performed under a tribe's inherent authority;

(2) a tribal adoption proceeding following a transfer of jurisdiction to the tribe of a foster care placement, termination of parental rights, or adoption of a child under 25 U.S.C. 1911(b);

(3) an adoption under tribal customary adoption; or

(4) adoptions or guardianships not a part of a child-in-need-of-aid proceeding.

* **Sec. 2.** AS 13.26.050 is amended by adding a new subsection to read:

(b) The venue for a guardianship proceeding for a child in state custody under AS 47.10 is the

(1) superior court where the child-in-need-of-aid proceeding is pending as provided under AS 47.10.111; or

(2) judicial district in which the petitioner resides if the petitioner provides notice to all of the parties to the child-in-need-of-aid proceeding and no party objects.

* **Sec. 3.** AS 13.26.060 is amended by adding a new subsection to read:

(e) A petitioner seeking appointment as the guardian of a minor in state custody under AS 47.10 shall file the petition in either the court where the child-in-need-of-aid proceedings are pending or the judicial district in which the petitioner resides, as required under AS 13.26.050(b) and AS 47.10.111.

* **Sec. 4.** AS 25.23.030 is amended by adding a new subsection to read:

(d) The venue for an adoption proceeding for a child in state custody under AS 47.10 is the

(1) superior court where the child-in-need-of-aid proceeding is pending as provided under AS 47.10.111; or

(2) judicial district in which the petitioner resides if the petitioner provides notice to all of the parties to the child-in-need-of-aid proceeding and no party objects.

* **Sec. 5.** AS 25.23.080 is amended by adding a new subsection to read:

(d) A petitioner petitioning to adopt a child in state custody under AS 47.10

shall file the petition for adoption in either the court where the child-in-need-of-aid proceedings are pending or the judicial district in which the petitioner resides, as required under AS 25.23.030(d) and AS 47.10.111.

* **Sec. 6.** AS 25.23.100(a) is amended to read:

(a) After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition **unless the petition is held in abeyance under AS 47.10.111**. At least 20 days before the date of hearing, the petitioner shall give notice of the filing of the petition and of the time and place of hearing to (1) the department, unless the adoption is by a stepparent of the child; (2) any agency or person whose consent to the adoption is required by this chapter, but who has not consented; and (3) a person whose consent is dispensed with upon any ground mentioned in AS 25.23.050(a)(1) - (3), (6), (8), and (9), but who has not consented. The notice to the department shall be accompanied by a copy of the petition.

* **Sec. 7.** AS 25.24.150(a) is amended to read:

(a) In an action for divorce or for legal separation**,** [OR] for placement of a child when one or both parents have died, **or as part of a child-in-need-of-aid proceeding for a child in state custody under AS 47.10,** the court may, if it has jurisdiction under AS 25.30.300 - 25.30.320, and is an appropriate forum under AS 25.30.350 and 25.30.360, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of a child of the marriage, make, modify, or vacate an order for the custody of or visitation with the minor child that may seem necessary or proper, including an order that provides for visitation by a grandparent or other person if that is in the best interests of the child. **The court shall hear custody proceedings related to a child in state custody under AS 47.10 as part of the child-in-need-of-aid proceedings, as provided under AS 47.10.113, unless notice is provided to all parties to the child-in-need-of-aid proceedings and no party objects to hearing the custody proceedings in another appropriate forum.**

* **Sec. 8.** AS 47.10.080(*l*) is amended to read:

(*l*) Within 12 months after the date a child enters foster care as calculated under AS 47.10.088(f), the court shall hold a permanency hearing. The hearing and permanent plan developed in the hearing are governed by the following provisions:

(1) the persons entitled to be heard under AS 47.10.070 or under (f) of this section are also entitled to be heard at the hearing held under this subsection;

(2) when establishing the permanent plan for the child, the court shall make appropriate written findings, including findings related to whether

(A) and when the child should be returned to the parent or guardian;

(B) the child should be placed for adoption or legal guardianship and whether a petition for termination of parental rights should be filed by the department; and

(C) there is a compelling reason that the most appropriate placement for the child is in another planned, permanent living arrangement and the department has recommended the arrangement under AS 47.14.100(p); the findings under this paragraph must include the steps that are necessary to achieve the new arrangement;

(3) if the court is unable to make a finding required under (2) of this subsection, the court shall hold another hearing within a reasonable period of time;

(4) in addition to the findings required by (2) of this subsection, the court shall also make appropriate written findings related to

(A) whether the department has made the reasonable efforts required under AS 47.10.086 to offer appropriate family support services to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid under this chapter;

(B) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid under this chapter;

(C) if the permanent plan is for the child to remain in out-of-home-care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and

(D) whether the department has made reasonable efforts to finalize the permanent plan for the child;

(5) the court shall hold a hearing to review the permanent plan at least

annually until successful implementation of the plan; if the plan approved by the court changes after the hearing, the department shall promptly apply to the court for another permanency hearing, and the court shall conduct the hearing within 30 days after application by the department;

(6) in a hearing to review the permanent plan under AS 47.10.111(c) or 47.10.112(c), the court shall make written findings related to whether

(A) the person who filed the petition or proxy is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable; and

(B) if 25 U.S.C. 1915(a) applies, the current placement is in compliance with or whether there is good cause to deviate from the placement preferences.

*** Sec. 9.** AS 47.10 is amended by adding new sections to read:

Sec. 47.10.111. Petition for adoption or guardianship of a child in state custody. (a) Except as provided under AS 13.26.050(b)(2) and AS 25.23.030(d)(2), if a person seeks adoption or appointment as legal guardian of a child in state custody under this chapter, the court shall hear the adoption or guardianship proceedings as part of the child-in-need-of-aid proceedings relating to the child. A person may initiate proceedings for the adoption or legal guardianship of a child in state custody under this chapter by filing with the court a petition

(1) for adoption that meets the requirements of AS 25.23.080; or

(2) to be appointed legal guardian that meets the requirements of AS 13.26.060.

(b) If a person files a petition for adoption or legal guardianship of a child under (a) of this section before the court approves adoption or legal guardianship as the permanent plan for the child under AS 47.10.080(*l*)(2), the court shall hold the petition in abeyance until after the court has approved adoption or legal guardianship as the permanent plan for the child under AS 47.10.080(*l*).

(c) If a person files a petition for adoption or legal guardianship of a child who is in out-of-home placement, and the child is not placed with the person who files the

petition at the time the person files the petition, the department shall, not more than 60 days after the petition is filed, submit a permanent plan to the court. The court shall hold a hearing to review the permanent plan for the child under AS 47.10.080(*l*) not more than 90 days after the petition is filed.

(d) A person who files a petition for adoption or legal guardianship of a child under this section does not become a party to the child-in-need-of-aid proceedings. A person who files a petition for adoption or legal guardianship of a child under this section may only participate in proceedings under this chapter that concern the person's petition.

(e) A parent who has consented to adoption under AS 25.23.060, who has relinquished parental rights under AS 47.10.089, or whose parental rights have been terminated under AS 47.10.080(o) or 47.10.088, is not a party to the adoption or guardianship proceedings under this section.

(f) Except as provided in this section, the requirements of AS 25.23.005 - 25.23.240 apply to a petition for adoption filed under this section, and the requirements of AS 13.26.030 - 13.26.085 apply to a petition for legal guardianship filed under this chapter.

Sec. 47.10.112. Proxy for a formal petition for adoption or legal guardianship. (a) A person seeking the immediate permanent placement of an Indian child in state custody under this chapter may file a proxy for a formal petition for adoption or legal guardianship of the child. A proxy for a formal petition for adoption preserves the placement preferences of 25 U.S.C. 1915(a) with respect to the person who files the proxy. A proxy for a formal petition for legal guardianship preserves the placement preferences of 25 U.S.C. 1915(b) with respect to the person who files the proxy. The court shall hear proceedings related to the proxy as part of the child-in-need-of-aid proceedings relating to the child.

(b) A proxy filed under this section does not initiate proceedings for adoption or legal guardianship. A person seeking to adopt a child in state custody must file a petition for adoption as required under AS 25.23. A person seeking to be appointed legal guardian of a child in state custody must file a petition for appointment as required under AS 13.26.030 - 13.26.085.

(c) If a person files a proxy for a formal petition for adoption or legal guardianship of an Indian child who is in out-of-home placement, and the child is not placed with the person who files the proxy at the time the person files the proxy, the department shall, not more than 60 days after the proxy is filed, submit a permanent plan to the court. The court shall hold a hearing to review the permanent plan for the child under AS 47.10.080(*l*) not more than 90 days after the proxy is filed.

(d) A person who files a proxy for a formal petition for adoption or legal guardianship of an Indian child under this section does not become a party to the child-in-need-of-aid proceedings. A person who files a proxy for a formal petition for adoption or legal guardianship may only participate in proceedings under this chapter that concern the person's proxy.

(e) A person who files a proxy for a formal petition for adoption or legal guardianship of an Indian child is not entitled to the appointment of a lawyer at public expense.

(f) A person who receives a proxy for a formal petition for adoption or legal guardianship shall file the proxy with the court.

(g) In this section,

(1) "extended family member" has the meaning given in 25 U.S.C. 1903;

(2) "proxy for a formal petition" or "proxy" means a

(A) request by an extended family member, a member of the Indian child's tribe, or other Indian family member interested in immediate permanent placement and adoption or legal guardianship of an Indian child made at any court hearing;

(B) request by an extended family member, a member of the Indian child's tribe, or other Indian family member interested in immediate permanent placement and adoption or legal guardianship of an Indian child, conveyed to the department by telephone, mail, facsimile, electronic mail, or in person;

(C) request by the Indian child's tribe, or a tribe in which the Indian child is eligible for enrollment, or a tribe in which the Indian child's

biological parent is a member, made to the department on behalf of an extended family member, member of the Indian child's tribe, or other Indian family member interested in immediate permanent placement and adoption or legal guardianship of an Indian child;

(D) request by the Indian child's biological parent, individually or through counsel, made to the department on behalf of an extended family member, member of the Indian child's tribe, or other Indian family member interested in immediate permanent placement and adoption or legal guardianship of an Indian child; or

(E) proxy for a formal petition as established by the department in regulation.

(h) The department may adopt regulations to implement this section.

Sec. 47.10.113. Civil custody proceedings. (a) Except as provided in AS 25.24.150(a), a court shall hear a request to make, modify, or vacate an order for the custody of or visitation with a minor child in state custody under this chapter as part of the child-in-need-of-aid proceedings relating to the child.

(b) A person who files a request for an order to make, modify, or vacate an order for the custody of or visitation with a minor child in state custody under this chapter is not entitled to the appointment of a lawyer at public expense under this section.

(c) Except as provided in this section, the requirements of AS 25.24.010 - 25.24.180 apply to a request under this section to make, modify, or vacate an order for the custody of or visitation with a minor child in state custody under this chapter.

* **Sec. 10.** AS 47.10.990(1) is amended to read:

(1) "adult family member" means a person who is 18 years of age or older and who is

(A) related to the child as the child's grandparent, aunt, uncle, or sibling; [OR]

(B) the child's sibling's legal guardian or parent; **or**

(C) in the case of an Indian child, an extended family member as defined in 25 U.S.C. 1903;

* **Sec. 11.** AS 47.10.990(10) is amended to read:

(10) "family member" means a person of any age who is

(A) related to the child as the child's grandparent, aunt, uncle, or sibling; [OR]

(B) the child's sibling's legal guardian or parent; **or**

(C) in the case of an Indian child, an extended family member as defined in 25 U.S.C. 1903;

* **Sec. 12.** AS 47.10.990 is amended by adding new paragraphs to read:

(33) "Indian child" has the meaning given in 25 U.S.C. 1903;

(34) "Indian child's tribe" has the meaning given in 25 U.S.C. 1903.

* **Sec. 13.** AS 47.14.100(t) is amended by adding a new paragraph to read:

(3) "family friend," as used in (e) of this section, includes, in the case of an Indian child, a member of the Indian child's tribe, a member of the tribe in which the child's biological parent is a member, and another Indian family member.

* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5, Alaska Adoption Rules, is amended by adding a new subsection to read:

(d) A petition to adopt a child in state custody under AS 47.10 must be brought in the superior court where the child-in-need-of-aid proceeding is pending or in the judicial district in which the petitioner resides as provided under AS 47.10.111 and AS 25.23.030(d).

* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 6(a)(1), Alaska Adoption Rules, is amended to read:

(1) An adoption petition must include the information required by AS 25.23.080**, except as provided under (a)(4) of this rule**. A separate petition must be filed for each person to be adopted. If the proceeding involves a minor, the petition must also state whether the minor to be adopted is an Indian child and whether any other court cases involving the minor are known to be pending.

* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 6(a), Alaska Adoption Rules, is amended by adding a new paragraph to read:

(4) A proceeding to adopt a child in state custody under AS 47.10 must comply with AS 47.10.111. A proceeding to adopt a child in state custody under AS 47.10 shall be heard either

(A) as part of the child-in-need-of-aid proceeding; or

(B) in the judicial district in which the petitioner resides if the petitioner provides notice to all of the parties to the child-in-need-of-aid proceedings and no party objects.

* **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. The Alaska Child in Need of Aid Rules of Procedure are amended by adding a new rule to read:

Rule 17.3. Petition or proxy for adoption or legal guardianship of a child under AS 47.10.111. (a) A petitioner may file a petition for adoption or legal guardianship of a child who is the subject of a pending child-in-need-of-aid proceeding under AS 47.10 as part of the same case. If a petitioner files a petition for adoption or legal guardianship of a child before the court approves adoption or legal guardianship as the permanent plan for the child, the court shall hold the petition for adoption or legal guardianship in abeyance until the court approves adoption or legal guardianship as the permanent plan for the child under Rule 17.2 and AS 47.10.080(*l*). If the child is in an out-of-home placement but is not placed with the petitioner at the time the petition is filed, the court shall hold a hearing within 90 days to review the permanent plan required under AS 47.10.111(c). At the hearing, the court shall, in addition to the findings required under Rule 17.2 and AS 47.10.080(*l*), make findings related to whether the petitioner is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable. If 25 U.S.C. 1915(a) applies, the court shall make written findings related to whether the current placement is in compliance with or whether there is good cause to deviate from the placement

preferences.

(b) A person may file a proxy for a formal petition for adoption or legal guardianship of an Indian child who is the subject of a pending child-in-need-of-aid proceeding under AS 47.10 as part of the same case. If a person files a proxy for a formal petition for adoption or legal guardianship of an Indian child who is in out-of-home placement, and the child is not placed with the person who files the proxy at the time the person files the proxy, the court shall hold a hearing within 90 days to review the permanent plan for the child as required under AS 47.10.112(c). At the hearing, the court shall, in addition to the findings required under Rule 17.2 and AS 47.10.080(*l*), make findings related to whether the person who filed the proxy is entitled to placement preference under 25 U.S.C. 1915(a), and whether the current placement complies with 25 U.S.C. 1915(a) or whether there is good cause to deviate from the placement preferences under 25 U.S.C. 1915(a).

*** Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 13.26.050(b), added by sec. 2 of this Act, AS 13.26.060(e), added by sec. 3 of this Act, AS 25.23.030(d), added by sec. 4 of this Act, AS 25.23.080(d), added by sec. 5 of this Act, AS 25.23.100(a), as amended by sec. 6 of this Act, AS 25.24.150(a), as amended by sec. 7 of this Act, AS 47.10.080(*l*), as amended by sec. 8 of this Act, AS 47.10.111 - 47.10.113, added by sec. 9 of this Act, and secs. 14 - 17 of this Act apply to proceedings for adoption or legal guardianship of a child in state custody under AS 47.10 filed on or after the effective date of secs. 2 - 17 of this Act.

*** Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Health and Social Services may adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by the regulation.

*** Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. This Act takes effect only if secs. 14 - 17 of this Act

receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

* **Sec. 21.** Section 19 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 22.** Except as provided in sec. 21 of this Act, this Act takes effect January 1, 2017.

DRAFT

HB200 WORK DRAFT - VERSION W

DETAILED SECTIONAL ANALYSIS

Sectional Analysis:

Section 1:

Adds a new section outlining Legislative findings and the intent, and explains that the purpose of the bill is to assist in preserving placement preferences outlined in 25 U.S.C. 1901 – 1963, and adds much-needed flexibility in the initiation of adoption, guardianship, or civil custody proceedings for a child in state custody. Clarifies the need for more appropriate adoption and legal guardianship processes for an Indian child in state custody under the Indian Child Welfare Act and allows for adoption, guardianship and civil custody matters in child-in-need-of-aid cases to be conjoined. The new section clarifies that this Act does not apply to: tribal adoptions performed under a Tribe's authority; tribal adoption proceeding transferred to the jurisdiction of the Tribe; tribal customary adoptions; or adoptions or guardianships not a part of child-in-need of aid proceedings.

Difference from Version A: adds to the legislative intent "guardianship and civil custody matters" in addition to adoptions.

Section 2:

Adds a new subsection to AS 13.26.050, which states a petition filed for adoption must comply with AS 47.10.111 and designates the venue shall be superior court where the child-in-need-of-aid proceeding is pending, or the judicial district in which the petitioner resides so long as the petitioner provides notice to all parties in the child-in-need-of-aid proceeding and no party objects.

Difference from Version A: adds language to allow petitioners in adoption matters to have the matter finalized in the judicial district in which they reside if no party in child in need-of-a-aid case objects.

Section 3:

A new subsection is added (e) which requires that a petitioner for guardianship or adoption "shall" file the petition in the court where the child-in-need-of-aid proceedings are pending under AS 47.10.111 and AS 13.20.050(b).

Difference from Version A: adds reference to AS 13.20.050(b).

Section 4:

Adds a new subsection (d) to AS 25.23.030 which requires that the venue for adoption proceeding for a child in state custody is superior court where the child-in-need-of-aid proceeding is pending as provided under AS 47.10.111; or in the judicial district in which the petitioner reside if the petitioner provides notice to all parties in the child-in-need-of-aid proceeding and no party objects.

DRAFT

Difference from Version A: adds language to allow petitioners in adoption matters to have the matter finalized in the judicial district in which they reside if no party in child in need-of-a-aid case objects.

Section 5:

Amends AS 25.23.080 by adding a new subsection (d) requiring that a petition to adopt a child in state custody under AS 47.10 "shall" be filed in the court where the child-in-need-of-aid proceedings are pending under AS 47.10.111 and AS 25.23.030(d).

Difference from Version A: changed "must" to "shall" and adds reference to AS 25.23.030(d).

Section 6:

Amends AS 25.23.100(a) to include language that allows for a petition for adoption to be held in abeyance under AS 47.10.111, when the petition is filed before the permanency goal has been changed to adoption.

Difference from Version A: no change

Section 7:

This section amends AS 25.24.150(a) to add language so that when a child is a child-in-need-of-aid under AS. 47.10 and there is an action which involves divorce or legal separation proceedings where the child's custody is a subject of the proceeding, the court shall hear all custody proceedings under the AS 47.10 child-in-need-of-aid proceedings, as provided in AS 47.10. 113. This provision may be heard separately if notice is provided to all parties in the child-in-need-of-aid proceedings and no party objects to hearing the custody proceedings in separate forums.

Difference from Version A: This section now includes that in addition to guardianship and adoption cases needed to be heard within the child-in-need-of-aid matter, so too, shall civil custody matters where there is action which involves divorce or legal separation proceeds regarding a child in state's custody.

Section 8:

This section requires that within 12 months after a child enters foster care, the court shall hold a hearing to determine a permanent plan for the child. As part of this proceeding, the court shall determine if the parent or guardian has made sufficient progress and if or when the child should return to the parent. If progress has not been made, the court will determine if the goal should be changed to adoption or legal guardianship, and if parental rights should be terminated among other things. As part of this process, the court will determine whether the department has made reasonable efforts to offer appropriate family support services to remedy the parents' or guardians' conduct or condition that made this a child-in-need-of-aid case and whether the department has made reasonable efforts to finalize the permanent plan for the child. This latest version of the bill amends AS 47.10.080(l) by adding a new subsection (6) that requires the court to make written findings in a permanency review hearing, related to whether any person who may have filed a petition or proxy is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable.

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Difference from Version A: no change

Section 9:

Amends AS 47.10 by adds three new sections AS 47.10.111, AS 47.10.112 and AS 47.10.113. AS 47.10.111 will allow a person who is seeking adoption or appointment as legal guardian of a child in state custody to submit a petition, and under this new chapter the adoption or guardianship case would be heard as part of the child-in-need-of-aid proceedings. If the petition is filed under this section, prior to the establishment of the permanent plan with the court, the petition will be held in abeyance until the court has approved the permanent plan of adoption or guardianship. The language also establishes timeframes for the department to consider the petitioner as an out of home placement for the child, if the child is not currently residing in the petitioner's care. Additionally, the petitioner will not be considered a party in the child-in-need-of-aid proceedings, and may only be a parent for matters that concern the petitioner. The language further clarifies that a parent who has either consented to the adoption or relinquished parental rights, or who has had parental rights terminated by the courts, is not a party to the adoption or legal guardianship proceedings under this section.

Section 47.10.112 creates the proxy for a formal petition for adoption or legal guardianship in cases in which the Indian Child Welfare Act (ICWA) applies. The proxy will preserve the placement preferences that are outlined in ICWA for the person that is filing the proxy. The filing of the proxy does not initiate the adoption or guardianship proceedings in the child-in-need-of-aid proceedings, this will only occur when the petition for adoption or legal guardianship is filed. The provisions outline timeframes for the department and the courts for considering the out of home placement with the person filing the proxy, if the child is not currently residing with the person filing the proxy.

Subsection (g) of this section further defines extended family member within the meaning of ICWA, and proxy for formal petition as a request from the Indian child's biological parent, individually or through counsel, made to the department on behalf of a extended family member, a member of the Indian child's Tribe extended family member, a member of the Indian child's Tribe or other Indian family member interested in immediate permanent placement and adoption or legal guardianship of an Indian child. The proxy for formal petition may be conveyed to the department via mail, facsimile, electronic mail, or in person. This new section will give the department the ability to create regulations related to the proxy for formal petition process.

Section 47.10.113, relates to the civil custody proceedings, requiring the court to make, modify or vacate an order for the custody of, or visitation with, a minor child in state custody under this chapter as a part of the child-in-need-of-aid proceedings.

Difference from Version A: adds reference to three newly created sections AS 47.10.111/112/113. AS 47.10.111 provides further clarity about what happens when a petition is filed, how it will be held in abeyance until the permanent plan is reviewed by the court. It furthers establishes timeframes the department must meet. It further adds clarity about party status and who would be considered a party or not.

AS 47.10.112 provides the clarity and language about the use of a "proxy" and describes how the "proxy" seeks to preserve the placement preferences outlined under the Indian Child Welfare Act

for those children where the Act applies. It also further defines extended family member within the meaning of ICWA, and that a biological parent individually or through counsel may also request a "proxy" made to the department on behalf of an extended family member, member of the Indian child's Tribe, or other Indian family member.

AS 47.10.113 relates to the addition of the civil custody matters and the courts review of those matters when there is a child who is subject to a child-in-need-of-aid preceding.

Section 10:

Amends AS 47.10.990(1) and clarifies the definition of the term "adult family member" in statute, and adding the ICWA language for extended family member.

Difference from Version A: clarifies that the definition of "adult family member" is in statute, and adds the ICWA language for extended family member.

Section 11:

Amends AS 47.10.990(10) and clarifies the definition of "family member" in statute and adding the ICWA language for extended family member.

Difference from Version A: clarifies that the definition of "adult family member" is in statute, and adds the ICWA language for extended family member.

Section 12:

Amends AS 47.10.990 by adding new paragraphs (33) and (34) to define "Indian child" and "Indian child's Tribe" to have the meaning outlined in ICWA under 25 U.S.C. 1903

Difference from Version A: added new paragraphs to more clearly define "Indian child" and "Indian child's Tribe".

Section 13:

Amends AS 47.14.100(t), adding a new paragraph which defines "family friend" to include, in the case of an Indian child, a member of Indian child's Tribe, a member of the Tribe in which the child biological parent in a member, and another Indian family member.

Difference from Version A: adds further detail to the definition of "family friend" that now includes members of Indian child's Tribe, a member of the Tribe in which the child's biological parent is a member or another Indian family member.

Section 14:

Adds to the Direct Court Rule 5. Alaska Adoption Rules, is amended by adding a new subsection requiring that a petition to adopt a child in state custody under AS 47.10 must be brought in the superior court where the child-in-need-of-aid proceeding is pending or in which the petitioner resides as provided under AS 47.10111 and AS 25.23.030(d).

Difference from Version A: adds language indicating the petition to adoption can also be brought in the district where the petitioner resides.

Section 15:

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Adds to the Direct Court Rule 6(a)(1) subsection (1) that an adoption petition must include information required by AS 25.23.080, except as provided under (a)(4) of this rule.

Difference from Version A: no change

Section 16:

Adds a new section to the Direct Court Rule 6(a) Alaska Adoption Rules to read in subsection (4), adding that a proceeding must comply with AS 47.10.111 and shall be heard in either as a part of the child-in-need-of-aid proceedings or in the judicial district in which the petitioner resides if notice is provided to all parties and no one objects.

Difference from Version A: further states that Alaska Adoption Rules now indicate that a proceed shall be heard as a part of the child-in-need-of-aid matter or in the judicial district in which the petitioner resides if notice is provide to the parties and no one objects.

Section 17:

Amends the Alaska Child-in-need-of-aid Rules of Procedure by adding rule 17.3, which allows a petitioner to file a petition for adoption or legal guardianship, or in the case of an Indian child, a proxy for adoption or legal guardianship of a child who is the subject of a child-in-need-of-aid proceeding. This rule also allows that if a petition or proxy is filed before the court approves adoption or legal guardianship as the permanency plan, then the petition or proxy is held in abeyance until such a time as the court does approve adoption or guardianship as the permanency goal. This rule places on the department a limit of 60 days after a petition or proxy is filed to submit a permanent plan and requires the court to hold a hearing within 90 days to review the permanent plan. Also, the court shall make findings related to whether the petitioner is entitled to placement preferences under state statute or the ICWA, whichever is applicable. This new section further outlines that a person may file a proxy for formal petition for adoption or legal guardianship of an Indian child in the child-in-need-of-aid proceeding, if the child is a subject to the CINA proceedings, and the court shall make a finding related to the placement preference compliance related to placement with the proxy for formal petition; as well as determining if there is good cause to deviate from the placement preferences as outlined in 25 U.S.C 1915(a).

Difference from Version A: adds clarity that the court rules now include petitions for adoption or legal guardianship. Also, details about the findings the court must make about whether the petitioner is entitled to placement preferences under ICWA or state statute, whichever apply as well as well as the compliance of placement preferences in relation to a proxy or if there is good cause to deviate from those preferences.

Section 18:

Adds uncodified law is amended to add a new section related to applicability to AS 13.26, AS 25.23 and AS 47.10.

Difference from Version A: adds reference to new subsections related applicability.

Section 19:

Adds a new section, allowing the Department of Health and Social Services authority to adopt regulations to implement this Act, and establishes that those regulations will take effect not before the effective date of this regulation.

Difference from Version A: no change.

Section 20:

Adds uncodified law by adding a new section which describes a conditional effect, which means that this law only takes effect if sections 14 -17 of this Act receive a two-thirds majority vote of each house required by article IV section 15, Constitution of the State of Alaska.

Difference from Version A: clarifies that regulations can be adopted upon the signing of the bill but all the other provisions are not affective until January 1, 2017 to give time for implementation.

Section 21:

Establishes the date of January 1, 2017 as the effective date for section 18.

Difference from Version A: clarifies that regulations can be adopted upon the signing of the bill but all the other provisions are not effective until January 1, 2017 to give time for implementation.

FISCAL NOTE

STATE OF ALASKA
2015 LEGISLATIVE SESSION

Bill Version: HB200
Fiscal Note Number:
() Publish Date:

Identifier (file name): HB200-DHSS-FLSW-1-12-16
Title: Adoption of Child in State Custody
Sponsor: Rules by Request of the Governor
Requester: (H) HSS

Dept. Affected: Health and Social Services
Appropriation: Office of Children's Services
Allocation: Front Line Social Workers
OMB Component Number: 2305

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY16 Appropriation Requested	Included in Governor's FY16 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY16**	**FY16**	**FY17**	**FY18**	**FY19**	**FY20**	**FY21**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)								
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1007	I/A Rcpts (Other)							
1156	Rcpt Svcs (DGF)							
		0.0	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY15) operating costs 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY16) costs 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes

If yes, by what date are the regulations to be adopted, amended, or repealed? 4/1/2016 Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by: Christy Lawton, Director
Division: Office of Children's Services
Phone: (907) 465-3170
Date/Time: 12/21/2015 4pm

Approved by: Sana Efird, Asst. Commissioner, Finance and Management Services
Agency: Health and Social Services
Date: 1/12/2016

(Revised 12/18/2014 OMB)

STATE OF ALASKA
2015 LEGISLATIVE SESSION

BILL NO. HB200

Analysis

Under current law, a person seeking to adopt any child in the custody of the department must file a formal petition for adoption. The adoption hearing would then be heard in a probate proceeding, which is separate from Child in Need of Aid proceedings. This creates challenges to the adoption process because a child in need of aid is a unique case. This bill would align adoption of a child in need of aid under AS 47.10 and allow for the department to develop alternatives to the formal adoption petitions that are currently required under AS 25.23.080. This bill will improve department compliance with the Indian Child Welfare Act and support tribal partnerships and efforts.

STATE of ALASKA

Bethel Legislative Information Office

PO Box 886
Bethel, Alaska 99559
(907) 543-3541
Fax- 543-3542

Written Testimony for the Record:

TCN: 4477 Committee: WHSS 465-3472

Date: 3/29/2016 Bill Number(s): HB 200

Subject(s): Alaska Adoption Laws

Please enter my testimony into the record.

Tara Hoffman
Testifier's name (s):

Alaska Federation of Natives
Representing (opt.)

PO Box 2374, Bethel, AK 99559
Address

(907) 545-4151
Phone

Anastasia Hoffman
PO Box 2374
Bethel, AK 99559
907-545-4151

Alaska State Legislature
House Health and Social Services Committee
State Capitol
Juneau, AK 99801

RE: Support for HB 200

March 29, 2016

Dear Committee Chair Representative Paul Seaton and Committee Members,

Thank you for the opportunity to comment on House Bill 200, Adoption of Child in State Custody. I fully support HB 200, a bill that will strengthen families in Alaska and streamline the process for Child in Need of Aid cases. As a former Magistrate and Standing Master with the Alaska Court System, I know the complexities involved in these civil matters. The system can be intimidating to people unfamiliar with court proceedings and unwelcoming to those with limited access to legal resources. HB 200 helps to bring focus back to the heart of the matter, ensuring that caring and nurturing family and friends are given an opportunity to provide for the well-being, safety and security of Alaska's children.

Not only will HB 200 streamline the CINA process and bring efficiencies to the court system, it will also advance the intent of the Indian Child Welfare Act. HB 200 will help the State of Alaska build stronger relationships with Alaska's first people by defining the proxy for formal petition and ensuring the ICWA placement preferences are observed. Through HB 200 the State of Alaska Office of Children's Services will work in partnership with Alaska Natives families and friends to establish paths for permanency for children facing uncertainty and turmoil in their young lives.

In Alaska, there is a desperate need to create a system that will reduce the amount of time children are held in state custody. The name of the bill says it all: "An Act establishing procedures related to a petition for adoption of a child in state custody; adding a definition of 'proxy for a formal petition'; amending Rule 6(a), Alaska Adoption Rules; and providing for an effective date." I look forward to January 1, 2017 as a brighter day for Alaska's many children in need of compassionate and loving adoptive home.

Quyana,

Ana Hoffman, Bethel
Co-Chair of the Alaska Federation of Natives

Chair Seaton
Rep. Talerico
Rep. Tarr

Tanana Chiefs Conference

Chief Peter John Tribal Building
122 First Avenue, Suite 600
Fairbanks, Alaska 99701-4897
(907) 452-8251 Fax: (907) 459-3850

SUBREGIONS

UPPER KUSKOKWIM
McGrath
Medfra
Nikolai
Takotna
Telida

LOWER YUKON
Anvik
Grayling
Holy Cross
Shageluk

UPPER TANANA
Dot Lake
Eagle
Healy Lake
Northway
Tanacross
Tetlin
Tok

YUKON FLATS
Arctic Village
Beaver
Birch Creek
Canyon Village
Chalkyitsik
Circle
Fort Yukon
Venetie

YUKON KOYUKUK
Galena
Huslia
Kaltag
Koyukuk
Nulato
Ruby

YUKON TANANA
Alatna
Allakaket
Evansville
Fairbanks
Hughes
Lake Minchumina
Manley Hot Springs
Minto
Nenana
Rampart
Stevens Village
Tanana

January 26, 2016

To: Senate Health & Social Services Committee Members
Re: House Bill 200/Senate Bill 112

Dear Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska.

Numerous state and national policy already dictate familial placements. This is based on research that proves time and again a child's family is the best placement option. State and federal statute mandate family placements of foster children when possible. For Native children, federal law takes this preference mandate further by ensuring preference to a child's tribe and other Native families when an immediate family placement is not available.

House Bill 200/Senate Bill 112 removes barriers for families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. This is a concern because our children are our greatest resource, and too often Native children suffer in adulthood when they lose connection to their Native culture. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska families who live in rural Alaska do not have fair access to the courts as do urban Alaskans. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Please take into consideration, that while this bill will help Alaska Native foster children, it will also help the 40% of the non-Native children in the system who also deserve to be placed with family.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

TANANA CHIEFS CONFERENCE

Victor Joseph
TCC President and CEO

From: Charity Carmody
To: Stedman, Bert K (LAA); Giessel, Cathy (LAA); Kelly, Pete (LAA); Stoltze, Bill (LAA); Ellis, Johnny (LAA)
Subject: Governor"s Adoption Bill HB 200/SB 112
Date: Tuesday, January 26, 2016 10:30:01 AM
Importance: High

Dear Senators –

I am writing you in support of House Bill 200/Senate Bill 112. I believe this to be a very important piece of legislation at this time. As you know, our child welfare system is in crisis. There are more children in the custody of the state than ever. Roughly 60% of these children are Alaska native. The reality of the situation is that we do not have enough foster and adoptive homes to adequately place these children.

I am the President and Founder of Beacon Hill. We are a foster care and adoption community resource center based in Anchorage. We provide many services to families involved in foster care and work hard to promote adoption for legally free children in our state. Without a doubt, one of the most grievous situations we come across is when an Alaska native child has a family or tribal member that wants to adopt them and yet they are subjected to bureaucracy and further trauma.

As a state and community, we are continuing to suffer from the consequences of our actions prior to ICWA. We must work diligently to remove barriers for Alaska Native families to be able to adopt. I believe that this bill is a good start in promoting permanency, preserving culture, and honoring the traditions of our land and Native people.

I urge you to pass this bill. If you would like to talk with me, I would be honored. Thank you for your taking the time to read this, for your service to our state and for caring about our children.

Charity Carmody, President
Beacon Hill
Serving Alaska's foster children and those at risk of going into foster care through the love of Christ.
PO Box 241764 Anchorage, AK 99524
907-222-0925 Resource Center Office
907-632-4862 Personal Cell

DOYON
Limited

LEADER in All We Do

February 5, 2016

Sent Via Electronic Mail
The Honorable Bert Stedman
Chairman of the Senate Health and Social Services Committee
Alaska State Legislature
State Capitol, Room 30
Juneau, AK 99801

Re: SB 112, Adoption of Child in State Custody

Dear Chairman Stedman:

This letter is a written statement of support for HB 200/SB 112 on behalf of Doyon, Limited. Doyon's mission is to enhance our position as a financially strong Native Corporation in order to promote the social and economic well-being of our shareholders, strengthen our native way of life, and enhance our land and resources.

Doyon, Limited is the state-chartered Alaska Native Corporation established pursuant to the Alaska Native Claims Settlement Act for Interior Alaska. Currently we have over 19,300 shareholders, most of whom live here in Alaska.

Doyon believes that HB 200/SB112 will have positive impacts for Alaska. State and federal statutes mandate family placements of foster children when placements are possible. Federal law, known as the Indian Child Welfare Act (ICWA), takes the preference mandate for Alaska Native children further by ensuring preference to a child's tribe and other Native families when an immediate family placement is not available.

Congress enacted ICWA in 1978 to combat to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, cultures, or communities.

Today, upwards of 40% of the Alaska Native children in state custody are adopted annually by non-Native families and individuals. Doyon supports HB 200/SB112, in

the hopes that it will increase the number of Alaska Native children who achieve permanency in line with the goals of ICWA.

Thank you for your commitment to returning Alaska Native children in state custody to their families, communities, and home regions.

Sincerely,

Aaron M. Schutt
President and CEO
Doyon, Limited

Cc: Governor Walker
Commissioner Davidson
Senator Cathy Giessel, Committee Vice-Chair
Senator Pete Kelly, Committee Member
Senator Bill Stoltze, Committee Member
Senator Johnny Ellis, Committee Member

From: Elizabeth Steven
To: Lawton, Christy (HSS)
Cc: Jenkins, Sarah L. (HSS Sponsored)
Subject: Letter of Support
Date: Tuesday, January 26, 2016 10:34:52 AM

To: Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

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Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Elizabeth J. Steven, ICWA Worker, Napaskiak Tribal Council

Lawton, Christy (HSS)

From: nunap.admin@gmail.com on behalf of NUP Tribal Administrator [tribaladmin@yupik.org]
Sent: Tuesday, January 26, 2016 11:12 AM
To: Lawton, Christy (HSS)
Subject: Support

The Nunapitchuk Tribe respectfully support SB 200 making it possible to perform adoptions for our tribe. We have pending adoptions that we work on following due process. Thank -you for this opportunity.

--

Eli Wassillie
Tribal Administrator
Native Village of Nunapitchuk
Nunapitchuk IRA Council
Box 130
Nunapitchuk, AK 99641
(907)527-5705; fax 527-5711

My new eMail address is tribaladmin@yupik.org

Kokhanok Village Council

ICWA Office

January 27, 2016

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. I believe this bill will have positive and lasting impacts for Alaska native children and families.

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Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Mary Andrew

Mary Andrew
ICWA Caseworker II

Kokhanok ICWA Office P.O. Box 1007 Kokhanok, AK 99606
• (O) 907.282.2224 • (F) 907.282.2221 • (E) kokhanokicwa@bbna.com

Raymond Watson, Chairperson
Myron P. Naneng Sr., President
Phone: (907) 543-7300
Fax: (907) 543-3369

AVCP

Association of Village Council Presidents
Administration
Pouch 219, Bethel, AK 99559

January 26, 2016

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

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Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Monique Vondall-Ricke, JD
Tribal Justice Center Director

To Senate Health & Social Services Committee Members,

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Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Raymond J. May

January 26, 2015

To Senate Health & Social Services Committee Members,

We are parents, school volunteers, and professionals who work with Alaska Native children and families. We are writing as constituents to support House Bill 200/Senate Bill 112. This bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

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Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Holly Handler
9831 Nine Mile Creek Rd
Juneau AK 99801

Leigh Dickey
313 St. Ann's
Douglas, AK 99824

Letter of Support

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities. The children that were adopted to non-native families were displaced and were alienated by both cultures of natives and non-natives.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child in Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Beverly D. Cano

Beverly D. Cano

1-26-16

Senate Health & Social Services Committee Members:

This is a letter in support of House Bill 200/Senate Bill 112.

I believe this bill will have important and positive impacts on the outcomes of Alaska Native children and the Alaska Native families who want to adopt them because this bill removes bureaucratic barriers making the process more accessible, understandable, and natural for families.

Alaska Native culture has kept children and families in Alaska safe, happy, and healthy in their communities for thousands of years and all Alaska Native children have the right to be connected to and grow up in their Alaska Native culture and heritage and with their Alaska Native family. I have heard and seen in my nine years of work as an Indian Child Welfare Act department director that over 40% of Alaska Native children adopted annually are adopted by non-Native, non-family members, non-ICWA. ICWA came into being to help prevent this 40% loss of Alaska Native children outside of their families and culture. This bill has the potential to decrease that 40% and increase the number of healthy and happy Alaska Native children who can grow up within their family, culture and traditions.

Passing this bill will help eliminate complicated procedural barriers inherent in probate court proceedings in the adoption process for children in custody-time, access to legal counsel, language, etc. Alaska Native families instead would be considered for adoption through regular Child in Need of Aid (CINA) proceedings, and would have natural opportunities to state their wish to adopt. They would also have the option to make their request through several avenues natural to them, by phone, mail, fax, email, or in person to the Office of Children's Services, and/or through a request made for them by the child's tribe. Providing these options would increase the number of Alaska native families willing and wanting to adopt to be able to be considered for adoption.

Thank you for your work to keep Alaskan's children with their families and in their own home communities and culture.

Sincerely,
Cheryl Offt
Yup'ik, mother, sister and auntie, lifelong Alaskan, and voter

January 26th, 2016

The Honorable Members of the Senate HSS Committee,

Please join us in making Alaska's children a priority. We are writing in support of House Bill 200/Senate Bill 112 "An Act establishing procedures related to a petition for adoption of a child in state custody; adding a definition of 'proxy for a formal petition'; amending Rule 6(a), Alaska Adoption Rules; and providing for an effective date." We believe this bill will have positive impacts for Alaskan children and families involved in child welfare.

Of the more than 2,800 children in state foster care, Alaska Native children are overrepresented, making up more than 60%. This Bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic, understandable, and conducive to Alaskan communities.

This Bill would allow for the child-in-need and adoption proceeding to be kept as one court matter, ultimately protecting children and families wishing to adopt, and saving state time and resources.

Alaskan children are twice as likely to experience abuse and neglect as children in any other state. Once children enter our foster care system, their hardships are not over. They are shuffled between "placements," waiting to see if they will be reunited with their families or begin the journey to finding some sense of permanency. This Bill could help children move more quickly toward permanency, ideally with relatives or tribal members.

As advocates, constituents, and caring Alaskan's we hope you will join us in making Alaska's children a priority.

Regards,

Amanda Metivier
Executive Director
Facing Foster Care in Alaska, Joined by;

Alaska Child & Family
Alaska Youth and Family Network
Covenant House Alaska
My House Inc.
Alaska Children's Trust
Beacon Hill
Volunteers of America, Alaska

ILIAMNA VILLAGE COUNCIL

P.O. BOX 286 ILIAMNA AK 99606
| 907-571-1246 TEL | 907-571-3539 FAX
Email: ivc@iliamnavc.org

January 25, 2016

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,
ILIAMNA VILLAGE COUNCIL

Thomas Hedlund, President

KTC

Kasigluk Traditional Council
Post Office Box 19
Kasigluk, Alaska 99609
Ph: (907) 477-6405 / 6406 Fx: (907) 477-6212
kasigluk.admin@gmail.com
kasigluk.bookkeeper@gmail.com

January 26, 2016

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native Families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

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Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Michael C. Martin

KTC President

KAWERAK , INC. ○ P.O. Box 948 ○ Nome, AK 99762
TEL: (907) 443-5231 • FAX: (907) 443-4452

SERVING THE
VILLAGES OF:
REVIG MISSION
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SAVOONGA
SHAKTOOLIK
SHISHMAREF
SOLOMON
STEBBINS
ST MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

1/26/16

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska Native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable. Family and tribal members who live in villages have little direct access to the documents required to make a formal request to adopt. Allowing family and tribal members to make their request known to an ICWA worker, OCS worker, or in court instead of with formal documentation, would increase the amount of children returning home.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

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Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

for Traci McGarry

Traci McGarry
Kawerak, Inc. Program Director
Children & Family Services/ Child Advocacy Center

MANIILAQ
ASSOCIATION

January 27, 2016

To: Senate Health & Social Services Committee
Re: House Bill 200/Senate Bill 112

Dear Members,

Please join us in making Alaska's children a priority. We are writing in support of House Bill 200/Senate Bill 112 "An Act establishing procedures related to a petition for adoption of a child in state custody; adding a definition of 'proxy for a formal petition'; amending Rule 6(a), Alaska Adoption Rules; and providing for an effective date." We believe this bill will have positive impacts for Alaskan children and families.

Of the more than 2,800 children in state foster care, Alaska Native children are overrepresented, making up more than 60%. This bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic, understandable, and conducive to Alaskan communities. This bill would allow for the child-in-need and adoption proceeding to be kept as one court matter, ultimately protecting children and families wishing to adopt, and saving state time and resources.

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Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. This is a concern because our children are our greatest resource, and too often Native children suffer into adulthood when they lose connection to their Native culture. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Thank you for supporting keeping Alaska's children with their families and in their home communities.

Sincerely,

Timothy Schuerch
President/CEO

MANILAQ ASSOCIATION | P.O. BOX 256 | KOTZEBUE, AK 99752 | 1-800-478-7914

Kotzebue Buckland Deering Kiana Kivalina
Kobuk Noatak Noorvik Point Hope Selawik Shungnak

Native Village of Kwinhagak
PO Box 149
Quinhagak, AK 99655
Phone 907-556-8165, FAX 907-556-8166

January 26, 2015

To Senate Health & Social Services Committee Members,

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Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,
Walter J. Hill

Walter J. Hill
President

Nondalton Tribal Council
P.O. Box 49
Nondalton, A.K. 99640
Ph. (907) 294-2257
Fax (907) 294-2271
nondaltontribe@yahoo.com
ntcfsilas@yahoo.com

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Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

William Evanoff, President

OHOGAMIUT TRADITIONAL COUNCIL
P.O. Box 49
Marshall, Alaska 99585
Phone: (907) 679-6517/6598 Fax (907) 679-6516
"Let us put our Minds Together and see what kind of Life we can build For our Children" – Sitting Bull

January 26, 2016

To: Senate Health & Social Services Committee Members:

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Sincerely,
OHOGAMIUT TRADITIONAL COUNCIL

Darlene Isaac

Darlene Isaac,
President

Cc: file

Pitkas Point Traditional Council
PO Box 127, #22 Pitkas Point
St. Marys, Alaska 99658
907-438-2833 – 907-438-2569 (fax)
pitkaspoint@yahoo.com

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Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Ruth Riley, President
Native Village of Pitkas Point

Cc: files

Scammon Bay Traditional Council
103 Askinuk Street/P.O. Box 110 Scammon Bay,AK 99662-0110
Phone (907) 558-5425 Fax (907) 558-5134 E-mail scammonbay@starband.net

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Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Sebastian Kasayuli, President

Tanana Chiefs Conference

Chief Peter John Tribal Building
122 First Avenue, Suite 600
Fairbanks, Alaska 99701-4897
(907) 452-8251 Fax: (907) 459-3850

January 26, 2016

To: Senate Health & Social Services Committee Members
Re: House Bill 200/Senate Bill 112

Dear Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska.

Numerous state and national policy already dictate familial placements. This is based on research that proves time and again a child's family is the best placement option. State and federal statute mandate family placements of foster children when possible. For Native children, federal law takes this preference mandate further by ensuring preference to a child's tribe and other Native families when an immediate family placement is not available.

House Bill 200/Senate Bill 112 removes barriers for families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. This is a concern because our children are our greatest resource, and too often Native children suffer in adulthood when they lose connection to their Native culture. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska families who live in rural Alaska do not have fair access to the courts as do urban Alaskans. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Please take into consideration, that while this bill will help Alaska Native foster children, it will also help the 40% of the non-Native children in the system who also deserve to be placed with family.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

TANANA CHIEFS CONFERENCE

Victor Joseph
TCC President and CEO

alaska children's trust

26 January 2017

To Senate Health & Social Services Committee Members,

It is with great pleasure to provide you with this letter of support for House Bill 200/Senate Bill 112. As the lead statewide organization focused on the prevention of child abuse and neglect, Alaska Children's Trust (ACT) recognizes that this bill will have positive and lasting impact for Alaska native children and families.

Children are one of the greatest resources in Alaska. We applaud the Office of Children Services, DHSS and the Walker Administration for addressing the high number of Alaska Native children in state custody and the need for a strong preference that those children be adopted into Native homes. Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. The success of these children overcoming the trauma they experienced and build the resilience they will need to manage the effects of the trauma are influenced by the environment around them. A key component to managing trauma is cultural/social resilience. Native Children who are adopted by native families have a strong linkage to their cultural heritage which builds resilience. Because of this, ACT supports the goal and purpose of HB 200.

HB200/SB 112 is one step closer to us ensuring Alaska's children grow-up in a safe, stable, and nurturing environment. The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable. Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

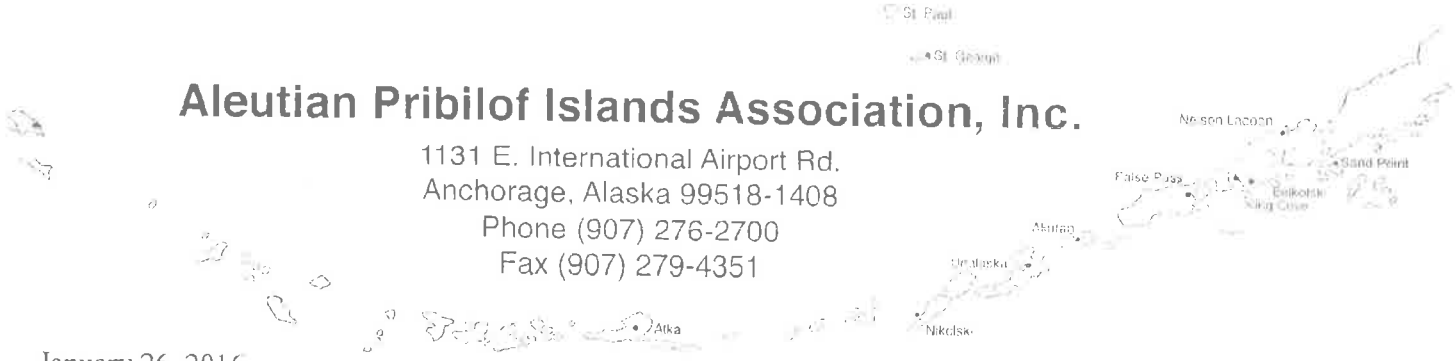
Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Trevor Storrs
Executive Director

Aleutian Pribilof Islands Association, Inc.

1131 E. International Airport Rd.
Anchorage, Alaska 99518-1408
Phone (907) 276-2700
Fax (907) 279-4351



January 26, 2016

Subject: **House Bill 200/Senate Bill 112—Keeping Alaska's Native Children with Family**

Dear Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. The Aleutian Pribilof Islands Association, Inc., and its thirteen (13) board members strongly believe this bill will have a positive and lasting impact for Alaska Native children and their families. The Bill efficiently removes barriers for Alaska Native families who strongly desire to adopt those connected to them by family or tribal membership by making the process more realistic and culturally relevant.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is the APIA's hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions. As you know, The U.S. Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the disturbing numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities. This had a devastating effect on Native families and ICWA has been key to reverse the traumatic effects of removal.

In addition, Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. Bill 112 seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different and convoluted proceeding held in Probate Court. With bill 112 in place, Alaska Native families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption. The Aleutian Pribilof Islands Association (APIA) strongly supports this action.

Committee members, on behalf of the 13 board members and 13 Tribes APIA represents, I urge you to support Senate Bill 112 by keeping Alaska Native children with their families and in their own home communities connected to their culture. Our future depends on it.

Sincerely,

Dimitri Philemonof
President & CEO

ASNA
ARCTIC SLOPE NATIVE ASSOCIATION

January 26, 2016

To Senate Health & Social Services Committee Members:

This letter is to support House Bill 200/Senate Bill 112. The Arctic Slope Native Association (ASNA) believes this bill will have positive and lasting impacts for Alaska Native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities. By tribal resolution, ASNA is the ICWA representative for the Arctic Slope communities of Atqasuk, Kaktovik, Nuiqsut and Wainwright. The services we provide include representing Tribal children in court cases, handling customary adoptions and working with families, courts, and the state to place children with relatives. This bill will strengthen the services we provide and allow maximum benefit for the people of the North Slope.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceedings and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Angela Cox
Vice President of Administration
Arctic Slope Native Association

P.O. Box 1232 Barrow, Alaska 99723 · 907.852.2762 · 907.852.2763 fax

CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
Edward K. Thomas Building
9097 Glacier Highway • Juneau, Alaska 99801

January 26, 2016

Senate Health and Social Services Committee Members
Capitol Building Room 205

RE: House Bill 200/Senate Bill 112

Dear Senate Health and Social Services Committee Members,

This letter is to support House Bill 200 and Senate Bill 112. Central Council believes this bill will have positive and lasting impacts for Alaska Native children and families.

The proposed legislation removes barriers for Alaska Native families who want to adopt children connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. This is a concern because our children are our greatest resource, and the long lasting effects of loss of tradition and culture can be measured well into adulthood. It is our hope this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska families who live in rural areas do not have fair access to the courts as do urban residents. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Please take into consideration, that while this bill will help Alaska Native foster children, it will also help the 40% of the non-Native children in the system who also deserve to be placed with a family.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Richard J. Peterson
President

Chevak Traditional Council
P.O. Box 140
Chevak, Alaska 99563
(907) 858-7428 fax (907) 858-7812
chevaktc@gmail.com

January 26, 2016

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. Chevak Native Village believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions and true identity.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

On behalf of Chevak Native Village Council,

Samson Matchian

Samson Matchian
Interm Administrator

COUNCIL OF ATHABASCAN TRIBAL GOVERNMENTS
P.O. Box 33
Fort Yukon, AK 99740
Ph: 907-662-2587 Fax: 907-662-3333
www.catg.org

To: Senate Health & Social Services Committee Members

Subject: Supporting House Bill 200/Senate Bill 112

Dear Members,

This letter is to support House Bill 200/Senate Bill 112. This bill will have positive and lasting impacts for Alaska's children and families.

House Bill 200/Senate Bill 112 removes barriers for families who want to adopt those connected to them by family or tribal membership by making the process more closely aligned to the realities rural families face.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. This bill will increase the number of Alaska Native children to reach permanency with their own family, culture and traditions. It will also help the 40% of non-Native children in the system who also deserve to be placed with family.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 because of the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes, never to be returned to their families, culture, or communities.

This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Respectfully submitted for your consideration,

Rhonda Pitka
CATG Chairwoman

Patricia J. Stanley
CATG Executive Director

KARLUK IRA TRIBAL COUNCIL
P.O. BOX 22
KARLUK, ALASKA 99608
(907)241-2218 FAX(907)241-2208
EMAIL: karlukiracouncil@aol.com

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child In Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,
Karluk IRA Tribal Council

KENAITZE
INDIAN
TRIBE

WWW.KENAITZE.ORG

PHONE: (907) 335-7200 • FAX: (907) 335-7239

P.O. BOX 988 • KENAI, AK 99611

January 26, 2016

The Honorable Bert Stedman
Chairperson, Senate Health and Social Services Committee
State Capitol Room 30
Juneau, AK 99801

Dear Chairperson Stedman:

I am writing on behalf of the Kenaitze Indian Tribe to express support for House Bill 200/Senate Bill 112. The tribe believes this bill will positively affect Alaska Native children and families now and into the future.

The bill simplifies the process for Alaska Native families who wish to adopt children connected to them by family or tribal membership. It also eliminates barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA). Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

We have seen these challenges firsthand at the tribe and believe that if this bill passes, it will benefit many Alaska Native children and families across the state.

Thank you for your consideration and support.

Sincerely,

Jaylene Peterson-Nyren
Executive Director
Kenaitze Indian Tribe

Louden Tribal Council
P.O. Box 244
Galena, Alaska 99741
Phone (907) 656-1711
Fax (907) 656-2491

Letter of Support

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Jenny Pelkola

Jenny Pelkola, First Chief
Louden Tribal Council

Native Village of Afognak

To embrace, protect, develop, and enhance Alutiiq culture, protect our traditional use areas and encourage unity among the Alutiiq of the Kodiak Archipelago

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Denise Malutin, Cultural Programs Coordinator
denise@afognak.org

323 Carolyn Street ✯ Kodiak, Alaska 99615 ✯ phone 907-486-6357 ✯ fax 907-486-6529

Hoonah Indian Association

P.O. Box 602
Hoonah, AK 99829-0602
Phone (907) 945-3545 Fax (907) 945-3703

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaska's children with their families and in their own home communities.

Sincerely,

Robert Starbard
Tribal Administrator

Native Village of Napakiak
P.O. BOX 34069
Napakiak, AK 99634
PH (907) 589-2135 FAX (907) 589-2136
nativevillageof_napakiak@yahoo.com

January 26, 2016

To: Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. The Native Village of Napakiak believes this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

David L. Andrew

David L. Andrew, Tribal Administrator

Newtok Village Council
P.O. Box 5596
Newtok, AK 99559

Mertarvik Community

Phone (907)237-2202
Fax (907)237-2210

To: Senate Health and Social Services Committee Members,

From: Newtok Village Council
100 Armory Road
PO Box 5596
Newtok, AK. 99559

RE: Support Letter

Dear Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.
The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.
Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.
Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian Children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.
Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. The bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child in Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.
Thank you for supporting keeping Alaskan's Children with their families and in their own home communities.

Sincerely,

2/3/16

President: Paul Charles

Organized Village of Kwethluk
Kwethluk Indian Reorganization Act Council
P. O. Box 130
Kwethluk, Alaska 99621

January 27, 2016

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Alexander Nicori Jr., Tribal Administrator
Organized Village of Kwethluk

Cc: OVK ICWA Program File
Kwethluk IRA Council

Oscarville Traditional Council

P. O. Box 6129
Napaskiak, Alaska
99559

Phone: (907) 737-7100
Tribal Fax: (907) 737-7428
ICWA Fax: (907) 737-7101
E-mail: alarson@avcp.com

CFSS/ICWA Program

MEMO LETTER

To: Senate Health & Social Services Committee Members

From: Andrew Jimmy Larson, Jr.-OTC ICWA/CFSS Worker

Date: 1/27/16

Re: Support Letter of House Bill 200/Senate Bill 112.

I want to present my support on the House Bill 200 and the Senate Bill 112. I believe this bill will have a lasting impact for Alaska Native Children and will secure placement of adoption to what is rightfully given to immediate family members that is less harmful to a child or children.

The bill will avert impending barriers for Alaska Native families to adopt that are closely related by family or are tribal members by making this process most effective for successful transition.

As you know 40% of Alaska Native children are adopted out to non-Native or non-family members. The House Bill 200 and the Senate Bill 112 will increase the number of Alaska Native children go to their communities, be cultural relevant, and maintain ties to their traditions.

In 1978 the US Congress enacted the Indian Child Welfare Act (ICWA) because of the alarming numbers of Indian children being removed from their homes by state and private welfare agencies. It placed them to non-Indian foster and/or adoptive homes both in and out of State. A child remained in the home was not close to family in the village, had no sense of cultural identify only to feel left out, and were not with other close relative's kin to the child or children and their families.

This bill will eliminate complicated procedures striped in legal counsel while adoptive process take place in State custody. The Child in Need of Aid (CINA) proceeds need to be uphold in Probate Court. Families will be able to assert their needs with the help of ICWA workers/advocates and a desired outcome can be done through (CINA) and would be required for consideration for adoption after the permanency goal changes to adopt.

On behalf of the OTC-Council and ICWA advocate is in support of keeping Alaskan's children with immediate family or family that meet the requirement and in their own home communities.

Andrew Jimmy Larson, Jr.-*OTC ICWA/CFSS Worker*
OSCARVILLE TRADITIONAL COUNCIL

CC: OTC ICWA FILE

Date: 26 January 2016
To: Senate Health & Social Services Committee Members
From: Verna Kolyaha, Pedro Bay Village Council Program Services
Re: HB 200/SB 112

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child in Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Verna Kolyaha
Program Services

Native Village of Bill Moore's Slough

P.O Box 20288

Kotlik, Alaska 99620

Phone (907)899-4232 Fax (907)899-4232

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. WE believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption through the Child in Need of Aid (CINA) proceedings instead of through and entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Stella Fancyboy

Native Village of Bill Moore's Slough President

VILLAGE of STONY RIVER dba Stony River Traditional

SRTC

Village of Stony
River Box SRV
Stony River AK,

Phone: 907-537-3258
Fax: 907-537-3254
E-mail: stony.river@yahoo.com

President-Mary Willis

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely, Mary Willis
Mary Willis
Village of Stony River

COOK
INLET
TRIBAL
COUNCIL
People. Partnership. Potential.

ph.
907 793.3600
fx.
907 793.3602
web.
CITCI.org

January 26, 2016

The Honorable Bert Stedman, Chair
Senate Health and Social Services Committee
Alaska State Senate
State Capitol
Juneau, AK 99801-1182

Dear Chairman Stedman:

Cook Inlet Tribal Council (CITC) writes in strong support of Senate Bill 112 because of the significant positive impact it will have on reducing the long term negative effects of placing Native children outside of their own communities and families. As the Senate Health and Social Services Committee is well aware, Native children make up over 60% of the children in out of home care, and Native adoptive families are often difficult to identify and place. CITC offers a wide spectrum of services that assist families both before and after their involvement with the Office of Children's Services. From supervised visitation to intensive in-home services, CITC has a tremendous impact on the families with whom we work. Last year CITC realized the following results in our Child and Family services division:

- 86 percent of program participants referred in the family preservation program maintained their children in their own care
- an average of 90 percent of families maintained care for their own children through the Intensive Family Preservation program
- 638 individuals participated in family support/preservation programs, of whom 100 percent avoided Office of Children's Services (OCS) involvement or placement

In addition, CITC's holistic, wrap-around services, including TANF, Recovery Services and education programs, support families to overcome their barriers and remain intact. Because of the nature of our work, CITC has an inside view of the opportunities to improve outcomes for Native families, and how important it is to make it as efficient as possible for family adoption to occur through the Child in Need of Aid (CINA) process.

SB 112 removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable and by removing obstacles that have resulted in children unnecessarily being disconnected from their families.

COOK INLET TRIBAL COUNCIL
3600 SAN JERONIMO DRIVE
ANCHORAGE, ALASKA 99508

Unfortunately, currently well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. This bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions, and will reduce litigation based on lack of compliance with the Indian Child Welfare Act (ICWA), which Congress enacted in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities. Sadly, after almost forty years, Alaska Native families still experience disproportionate rates of children placed out of their homes and culture.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the CINA proceedings instead of through an entirely different proceeding held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption. As a result, children in out-of-home placement would reach permanency more quickly, lessening the burden on Alaska's Office of Children's Services.

Thank you for supporting keeping Alaska's children with their families and in their own home communities.

Sincerely,

for G. O'Neill

Gloria O'Neill
President/CEO

COOK INLET TRIBAL COUNCIL
3600 SAN JERONIMO DRIVE
ANCHORAGE, ALASKA 99508

Mentasta Traditional Council
P.O. Box 6019
Mentasta Lake, AK 99780
Phone # (907) 291-2319
Fax # (907) 291-2305
mentastatraditionalcouncil@yahoo.com

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

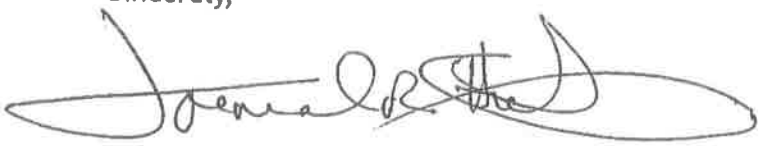
Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,



Joeneal Hicks
Tribal Administrator
Mentasta Traditional Council

From: Teresa Simeon-Hunter
To: Lawton, Christy (HSS)
Cc: Cheryl Offt
Subject: support letter
Date: Tuesday, January 26, 2016 1:08:45 PM

January 26, 2016

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska Native Children and Families.

The bill remove barriers for Alaska Native Families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native Children who are adopted annually are adopted by non –Native, non-Family members. It is our hope that this bill will increase the number of Alaska Native Children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian Children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native Families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native Families can be considered for adoption through the Child In Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desires to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's Children with their families and in their own home communities.

Quyana,

Teresa Simeon-Hunter

Family Community Services Specialist –ICWA

Chuathbaluk, Alaska

Taneeka Hansen

From: Liz Medicine Crow <LizMedicineCrow@firstalaskans.org>
Sent: Monday, February 22, 2016 10:30 AM
To: Rep. Paul Seaton; Rep. Liz Vazquez; Rep. David Talerico; Rep. Neal Foster; Rep. Louise Stutes; Rep. Geran Tarr; Rep. Adam Wool
Cc: Davidson, Valerie J (HSS); karen.forrest@alaska.gov; Lawton, Christy (HSS); Andrea Sanders; Liz Medicine Crow
Subject: Support for House Bill 200/Senate Bill 112

Categories: committee, Taneeka

First Alask

February 20, 2016

To: House Health & Social Services Committee

Re: House Bill 200/Senate Bill 112

Dear Committee Members,

As a statewide Alaska Native nonprofit organization, we would like to express our support for House Bill 200/Senate Bill 112. These bills will have positive and lasting impacts for Alaska's children and families in

two important ways: strengthening Alaska by growing healthier children; and eliminating complicated and costly procedural barriers in the adoption process for children in custody. Of critical importance to our communities, these bills pave the way for more Alaska Native children within the OCS system to reach permanency with their family, culture and traditions.

When state intervention occurs and children are removed from their parents, numerous tribal, state, and national policies already dictate familial placements, in recognition that a child's family is the best placement option. While this reflects every family's wish to keep their children with them, in the case of Alaska Native and American Indian children specifically, Congress enacted the Indian Child Welfare Act (ICWA) in 1978 in urgent response to the alarming and extreme occurrences of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes - never to be returned to their families, cultures, or communities.

This federal law mandates placement preferences to a child's Tribe and other Native families when an immediate family placement is not available because of the cultural and familial devastation that occurs when children are removed from the strength of their cultural birthrights and communities. Like all children are to their families and cultures, our children are our lifeblood - and their connection to family and culture is theirs. Growing up connected to and knowing who they are is every child's right, and family preference laws allow that value and the spirit of the law to be equitably implemented.

At nearly 60%, Alaska Native children are disproportionately represented in the overall foster care system today, while well over 40% of Alaska Native children adopted annually are adopted by non-Native, non-family members. Clearly, this is a crisis that was intended to be addressed with the passage of the Act, and can be addressed today through these bills by integrating the spirit of ICWA more equitably for Alaska families, so that no matter where they live they can more readily assert their desire to adopt their family's and communities' children. As you can imagine, this issue is of paramount concern to Alaska Native people across the state.

At First Alaskans Institute, over the past 12 years, we have had the great honor and responsibility of helping develop our communities' leadership with over 8,000 children, youth, and young leaders from across Alaska. Throughout this time, we have seen time and time again that our young people who seek to strengthen or already have strong connection to cultural knowledge, values and relationships have the inherent ability and capacity to lead our peoples, inspire change, promote healing, and support the growth of healthy, thriving communities throughout Alaska and the nation. Culturally connected, confident and healthy young Native leaders are Alaska's greatest treasure and in the promise of their well being lies the key to Alaska's future.

The practical efficiencies of the placement framework offered within the House Bill 200/Senate Bill 112 will reduce government inefficiencies around child placement. These bills also make the process more realistic, accessible, and understandable for those who want to adopt family children or those connected via Tribal membership, thereby increasing the ability of all children in the system - Native or not - to be placed with their families and communities. This is a great example of *what's good for Alaska Native children is good for all children* - a win-win situation for all of Alaska's children, families and state government.

Thank you for all of your hard work to keep Alaska's children with their families and communities. This bill is a sound investment in the future of our state.

Sincerely,

Liz Medicine Crow *(Haida/Tlingit)*
President/CEO

Andrea Sanders *(Yup'ik)*
ANPC Director

Cc:

Senate Health & Social Service Committee:

Senator Bert Stedman, Chair

Senator Cathy Giessel, Vice Chair

Senator Pete Kelly, Member

Senator Bill Stoltze, Member

Senator Johnny Ellis, Member

Department of Health & Social Services

Valerie Davidson, Commissioner

Karen Forrest, Deputy Commissioner

Christy Lawton, Office of Children's Services Director

ALEUT COMMUNITY OF ST. PAUL
TRIBAL GOVERNMENT

2050 VENIA MINOR ROAD
P.O. BOX 86
ST. PAUL ISLAND, ALASKA 99660

OFFICE OF THE PRESIDENT

February 3, 2016

To Senate Health & Social Services Committee Members,

This letter is to support House Bill 200/Senate Bill 112. We believe this bill will have positive and lasting impacts for Alaska native children and families.

The bill removes barriers for Alaska Native families who want to adopt those connected to them by family or tribal membership by making the process more realistic and understandable.

Well over 40% of Alaska Native children who are adopted annually are adopted by non-Native, non-family members. It is our hope that this bill will increase the number of Alaska Native children to reach permanency with their family, culture and traditions.

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 due to the alarming numbers of Indian children being removed from their homes by state and private welfare agencies and placed in non-Indian foster and adoptive homes never to be returned to their families, culture, or communities.

Alaska Native families who live in rural Alaska may not speak English fluently or they may have difficulties obtaining legal counsel. This bill seeks to eliminate complicated procedural barriers in the adoption process for children in custody so that Alaska Native families can be considered for adoption through the Child in Need of Aid (CINA) proceedings instead of through an entirely different proceedings held in Probate Court. Families will be able to assert their desire to adopt a child through the Child In Need of Aid proceeding and would be considered for adoption after the permanency goal changes to adoption.

Thank you for supporting keeping Alaskan's children with their families and in their own home communities.

Sincerely,

Amos T. Philemonoff, Sr.
President, Aleut Community of St. Paul Island

907-546-3200 (Main) •907-546-3254 (Fax) • http://www.tgspi.com

133 S.Ct. 2552
Supreme Court of the United States

ADOPTIVE COUPLE, Petitioners
v.
BABY GIRL, a minor child under the age of fourteen years, et al.

No. 12–399.
|
Argued April 16, 2013.
|
Decided June 25, 2013.

Synopsis
Background: Prospective adoptive parents filed petition to adopt child. Biological father, a member of an Indian tribe, opposed adoption, and Cherokee Nation intervened. The Family Court, Charleston County, Deborah Malphrus, J., denied petition and required prospective adoptive parents to transfer child to father. Prospective adoptive parents appealed. The South Carolina Supreme Court, Toal, C.J., 398 S.C. 625, 731 S.E.2d 550, affirmed. Certiorari was granted.

Holdings: The United States Supreme Court, Justice Alito, held that:

[1] Indian Child Welfare Act (ICWA) section conditioning involuntary termination of parental rights for Indian child on a showing regarding merits of continued custody of child by parent does not apply where Indian parent never had custody;

[2] ICWA section providing that party seeking to terminate parental rights to Indian child under state law shall satisfy court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent breakup of Indian family and that these efforts have proved unsuccessful does not apply where Indian parent abandoned Indian child prior to birth and child had never been in Indian parent's legal or physical custody; and

[3] ICWA section providing placement preferences for adoption of Indian children does not bar a non-Indian family from adopting an Indian child when no other eligible candidates have sought to adopt the child.

Reversed and remanded.

Justice Thomas filed a concurring opinion.

Justice Breyer filed a concurring opinion.

Justice Scalia filed a dissenting opinion.

Justice Sotomayor, with whom Justice Ginsburg and Justice Kagan joined, and with whom Justice Scalia joined in part, filed a dissenting opinion.

***2554** *Syllabus* *

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

The Indian Child Welfare Act of 1978 (ICWA), which establishes federal standards for state-court child custody proceedings involving Indian children, was enacted to address "the consequences ... of abusive child welfare practices that [separated] Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes," *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 32, 109 S.Ct. 1597, 104 L.Ed.2d 29. As relevant here, the ICWA bars involuntary termination of a parent's rights in the absence of a heightened showing that serious harm to the Indian child is likely to result from the parent's "continued custody" of the child, 25 U.S.C. § 1912(f); conditions involuntary termination of parental rights with respect to an Indian child on a showing that remedial efforts have been made to prevent the "breakup of the Indian family," § 1912(d); and provides placement preferences for the adoption of Indian children to members of the child's extended family, other members of the Indian child's tribe, and other Indian families, § 1915(a).

While Birth Mother was pregnant with Biological Father's child, their relationship ended and Biological Father (a member of the Cherokee Nation) agreed to relinquish his parental rights. Birth Mother put Baby Girl up for adoption through a private adoption agency and selected Adoptive

Couple, non-Indians living in South Carolina. For the duration of the pregnancy and the first four months after Baby Girl's birth, Biological Father provided no financial assistance to Birth Mother or Baby Girl. About four months after Baby Girl's birth, Adoptive Couple served Biological Father with notice of the pending adoption. In the adoption proceedings, Biological Father sought custody and stated that he did not consent to the adoption. Following a trial, which took place ***2555** when Baby Girl was two years old, the South Carolina Family Court denied Adoptive Couple's adoption petition and awarded custody to Biological Father. At the age of 27 months, Baby Girl was handed over to Biological Father, whom she had never met. The State Supreme Court affirmed, concluding that the ICWA applied because the child custody proceeding related to an Indian child; that Biological Father was a "parent" under the ICWA; that §§ 1912(d) and (f) barred the termination of his parental rights; and that had his rights been terminated, § 1915(a)'s adoption-placement preferences would have applied.

Held:

1. Assuming for the sake of argument that Biological Father is a "parent" under the ICWA, neither § 1912(f) nor § 1912(d) bars the termination of his parental rights. Pp. 2559 – 2564.

(a) Section 1912(f) conditions the involuntary termination of parental rights on a heightened showing regarding the merits of the parent's "continued custody of the child." The adjective "continued" plainly refers to a pre-existing state under ordinary dictionary definitions. The phrase "continued custody" thus refers to custody that a parent already has (or at least had at some point in the past). As a result, § 1912(f) does not apply where the Indian parent *never* had custody of the Indian child. This reading comports with the statutory text, which demonstrates that the ICWA was designed primarily to counteract the unwarranted *removal* of Indian children from Indian families. See § 1901(4). But the ICWA's primary goal is not implicated when an Indian child's adoption is voluntarily and lawfully initiated by a non-Indian parent with sole custodial rights. Nonbinding guidelines issued by the Bureau of Indian Affairs (BIA) demonstrate that the BIA envisioned that § 1912(f)'s standard would apply only to termination of a *custodial* parent's rights. Under this reading, Biological Father should not have been able to invoke § 1912(f) in this case because he had never had legal or physical custody of Baby Girl as of the time of the adoption proceedings. Pp. 2559 – 2562.

(b) Section § 1912(d) conditions an involuntary termination of parental rights with respect to an Indian child on a showing "that active efforts have been made to provide remedial services ... designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." Consistent with this text, § 1912(d) applies only when an Indian family's "breakup" would be precipitated by terminating parental rights. The term "breakup" refers in this context to "[t]he discontinuance of a relationship," American Heritage Dictionary 235 (3d ed. 1992), or "an ending as an effective entity," Webster's Third New International Dictionary 273 (1961). But when an Indian parent abandons an Indian child prior to birth and that child has never been in the Indian parent's legal or physical custody, there is no "relationship" to be "discontinu[ed]" and no "effective entity" to be "end[ed]" by terminating the Indian parent's rights. In such a situation, the "breakup of the Indian family" has long since occurred, and § 1912(d) is inapplicable. This interpretation is consistent with the explicit congressional purpose of setting certain "standards for the removal of Indian children from their families," § 1902, and with BIA Guidelines. Section 1912(d)'s proximity to §§ 1912(e) and (f), which both condition the outcome of proceedings on the merits of an Indian child's "continued custody" with his parent, strongly suggests that the phrase "breakup of the Indian family" should be read in harmony with the "continued custody" requirement. Pp. 2562 – 2564.

***2556** 2. Section 1915(a)'s adoption-placement preferences are inapplicable in cases where no alternative party has formally sought to adopt the child. No party other than Adoptive Couple sought to adopt Baby Girl in the Family Court or the South Carolina Supreme Court. Biological Father is not covered by § 1915(a) because he did not seek to adopt Baby Girl; instead, he argued that his parental rights should not be terminated in the first place. And custody was never sought by Baby Girl's paternal grandparents, other members of the Cherokee Nation, or other Indian families. Pp. 2563 – 2565.

398 S.C. 625, 731 S.E.2d 550, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C.J., and KENNEDY, THOMAS, and BREYER, JJ., joined. THOMAS, J., and BREYER, J., filed concurring opinions. SCALIA, J., filed a dissenting opinion. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG and KAGAN, JJ., joined, and in which SCALIA, J., joined in part.

Attorneys and Law Firms

Lisa S. Blatt, Washington, DC, for Petitioners.

Paul D. Clement, Washington, DC, for Respondent Guardian ad Litem in support of the Petitioners.

Charles A. Rothfeld, Washington, DC, for Respondents Birth Father, et al.

Edwin S. Kneedler, for the United States as amicus curiae, by special leave of the Court, supporting the Respondents Birth Father, et al.

Mark Fiddler, Fiddler Law Office, P.A., Minneapolis, MN, Lisa S. Blatt, Counsel of Record, Christopher S. Rhee, R. Reeves Anderson, Bob Wood, Arnold & Porter LLP, Washington, DC, for Petitioners.

Thomas P. Lowndes, Charleston, SC, Paul D. Clement, Counsel of Record, Kelsi Brown Corkran, Bancroft PLLC, Washington, DC, for Guardian ad Litem as Representative of Baby Girl.

John S. Nichols, Bluestein, Nichols, Thompson & Delgado LLC, Columbia, SC, Shannon Phillips Jones, Charleston, SC, Lesley Ann Sasser, Charleston, SC, Charles A. Rothfeld, Counsel of Record, Andrew J. Pincus, Paul W. Hughes, Michael B. Kimberly, Mayer Brown LLP, Washington, DC, Jeffrey A. Meyer, Yale Law School Supreme Court Clinic, New Haven, CT, for Respondent Birth Father.

Lloyd B. Miller, William R. Perry, Anne D. Noto, Colin Cloud Hampson, Sonosky, Chambers, Sachse, Endreson & Perry, LLP, Washington, DC, Carter G. Phillips, Sidley Austin LLP, Washington, DC, Todd Hembree, Attorney General, Chrissi Ross Nimmo, Assistant Attorney General, Counsel of Record, Cherokee Nation, Tahlequah, OK, for Respondent Cherokee Nation.

Opinion

Justice ALITO delivered the opinion of the Court.

This case is about a little girl (Baby Girl) who is classified as an Indian because she is 1.2% (3/256) Cherokee. Because Baby Girl is classified in this way, the South Carolina Supreme Court held that certain provisions of the federal Indian Child Welfare Act of 1978 required her to be taken, at the age of 27 months, from the only parents she had ever known and handed over to her biological father, who had attempted to relinquish his parental rights and who had no prior contact with the child. The provisions of the federal statute ***2557** at issue here do not demand this result.

Contrary to the State Supreme Court's ruling, we hold that 25 U.S.C. § 1912(f)—which bars involuntary termination of a parent's rights in the absence of a heightened showing that serious harm to the Indian child is likely to result from the parent's "continued custody" of the child—does not apply when, as here, the relevant parent never had custody of the child. We further hold that § 1912(d)—which conditions involuntary termination of parental rights with respect to an Indian child on a showing that remedial efforts have been made to prevent the "breakup of the Indian family"—is inapplicable when, as here, the parent abandoned the Indian child before birth and never had custody of the child. Finally, we clarify that § 1915(a), which provides placement preferences for the adoption of Indian children, does not bar a non-Indian family like Adoptive Couple from adopting an Indian child when no other eligible candidates have sought to adopt the child. We accordingly reverse the South Carolina Supreme Court's judgment and remand for further proceedings.

I

"The Indian Child Welfare Act of 1978 (ICWA), 92 Stat. 3069, 25 U.S.C. §§ 1901–1963, was the product of rising concern in the mid–1970's over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes." *Mississippi Band of Choctaw Indians v. Holyfield,* 490 U.S. 30, 32, 109 S.Ct. 1597, 104 L.Ed.2d 29 (1989). Congress found that "an alarmingly high percentage of Indian families [were being] broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies." § 1901(4). This "wholesale removal of Indian children from their homes" prompted Congress to enact the ICWA, which establishes federal standards that govern state-court child custody proceedings involving Indian children. *Id.,* at 32, 36, 109 S.Ct. 1597 (internal quotation marks omitted); see also § 1902 (declaring that the ICWA establishes "minimum Federal standards for the removal of Indian children from their families"). [1]

1 It is undisputed that Baby Girl is an "Indian child" as defined by the ICWA because she is an unmarried minor who "is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe," § 1903(4)(b). See Brief for Respondent Birth Father 1, 51, n. 22; Brief for Respondent Cherokee Nation 1; Brief for Petitioners 44 ("Baby Girl's eligibility for membership in the Cherokee Nation depends solely upon a lineal blood relationship with a tribal ancestor"). It is also undisputed that the present case concerns a "child custody proceeding," which the ICWA defines to include proceedings that involve "termination of parental rights" and "adoptive placement," § 1903(1).

Three provisions of the ICWA are especially relevant to this case. *First,* "[a]ny party seeking" an involuntary termination of parental rights to an Indian child under state law must demonstrate that "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." § 1912(d). *Second,* a state court may not involuntarily terminate parental rights to an Indian child "in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is ***2558** likely to result in serious emotional or physical damage to the child." § 1912(f). *Third,* with respect to adoptive placements for an Indian child under state law, "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." § 1915(a).

II

In this case, Birth Mother (who is predominantly Hispanic) and Biological Father (who is a member of the Cherokee Nation) became engaged in December 2008. One month later, Birth Mother informed Biological Father, who lived about four hours away, that she was pregnant. After learning of the pregnancy, Biological Father asked Birth Mother to move up the date of the wedding. He also refused to provide any financial support until after the two had married. The couple's relationship deteriorated, and Birth Mother broke off the engagement in May 2009. In June, Birth Mother sent Biological Father a text message asking if he would rather pay child support or relinquish his parental rights. Biological Father responded via text message that he relinquished his rights.

Birth Mother then decided to put Baby Girl up for adoption. Because Birth Mother believed that Biological Father had Cherokee Indian heritage, her attorney contacted the Cherokee Nation to determine whether Biological Father was formally enrolled. The inquiry letter misspelled Biological Father's first name and incorrectly stated his birthday, and the Cherokee Nation responded that, based on the information provided, it could not verify Biological Father's membership in the tribal records.

Working through a private adoption agency, Birth Mother selected Adoptive Couple, non-Indians living in South Carolina, to adopt Baby Girl. Adoptive Couple supported Birth Mother both emotionally and financially throughout her pregnancy. Adoptive Couple was present at Baby Girl's birth in Oklahoma on September 15, 2009, and Adoptive Father even cut the umbilical cord. The next morning, Birth Mother signed forms relinquishing her parental rights and consenting to the adoption. Adoptive Couple initiated adoption proceedings in South Carolina a few days later, and returned there with Baby Girl. After returning to South Carolina, Adoptive Couple allowed Birth Mother to visit and communicate with Baby Girl.

It is undisputed that, for the duration of the pregnancy and the first four months after Baby Girl's birth, Biological Father provided no financial assistance to Birth Mother or Baby Girl, even though he had the ability to do so. Indeed, Biological Father "made no meaningful attempts to assume his responsibility of parenthood" during this period. App. to Pet. for Cert. 122a (Sealed; internal quotation marks omitted).

Approximately four months after Baby Girl's birth, Adoptive Couple served Biological Father with notice of the pending adoption. (This was the first notification that they had provided to Biological Father regarding the adoption proceeding.) Biological Father signed papers stating that he accepted service and that he was "not contesting the adoption." App. 37. But Biological Father later testified that, at the time he signed the papers, he thought that he was relinquishing his rights to Birth Mother, not to Adoptive Couple.

Biological Father contacted a lawyer the day after signing the papers, and subsequently ***2559** requested a stay of the adoption proceedings.[2] In the adoption proceedings,

Biological Father sought custody and stated that he did not consent to Baby Girl's adoption. Moreover, Biological Father took a paternity test, which verified that he was Baby Girl's biological father.

2 Around the same time, the Cherokee Nation identified Biological Father as a registered member and concluded that Baby Girl was an "Indian child" as defined in the ICWA. The Cherokee Nation intervened in the litigation approximately three months later.

A trial took place in the South Carolina Family Court in September 2011, by which time Baby Girl was two years old. 398 S.C. 625, 634–635, 731 S.E.2d 550, 555–556 (2012). The Family Court concluded that Adoptive Couple had not carried the heightened burden under § 1912(f) of proving that Baby Girl would suffer serious emotional or physical damage if Biological Father had custody. See *id.*, at 648–651, 731 S.E.2d, at 562–564. The Family Court therefore denied Adoptive Couple's petition for adoption and awarded custody to Biological Father. *Id.*, at 629, 636, 731 S.E.2d, at 552, 556. On December 31, 2011, at the age of 27 months, Baby Girl was handed over to Biological Father, whom she had never met.[3]

3 According to the guardian ad litem, Biological Father allowed Baby Girl to speak with Adoptive Couple by telephone the following day, but then cut off all communication between them. Moreover, according to Birth Mother, Biological Father has made no attempt to contact her since the time he took custody of Baby Girl.

The South Carolina Supreme Court affirmed the Family Court's denial of the adoption and the award of custody to Biological Father. *Id.*, at 629, 731 S.E.2d, at 552. The State Supreme Court first determined that the ICWA applied because the case involved a child custody proceeding relating to an Indian child. *Id.*, at 637, 643, n. 18, 731 S.E.2d, at 556, 560, n. 18. It also concluded that Biological Father fell within the ICWA's definition of a " 'parent.' " *Id.*, at 644, 731 S.E.2d, at 560. The court then held that two separate provisions of the ICWA barred the termination of Biological Father's parental rights. *First,* the court held that Adoptive Couple had not shown that "active efforts ha[d] been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family." § 1912(d); see also *id.*, at 647–648, 731 S.E.2d, at 562. *Second,* the court concluded that Adoptive Couple had not shown that Biological Father's "custody of Baby Girl would result in serious emotional or physical harm to her beyond a reasonable doubt." *Id.*, at 648–649, 731 S.E.2d, at 562–563 (citing § 1912(f)). Finally, the court stated that, even if it had decided to terminate Biological Father's parental rights, § 1915(a)'s adoption-placement preferences would have applied. *Id.*, at 655–657, 731 S.E.2d, at 566–567. We granted certiorari. 568 U.S. ——, 133 S.Ct. 831, 184 L.Ed.2d 646 (2013).

III

It is undisputed that, had Baby Girl not been 3/256 Cherokee, Biological Father would have had no right to object to her adoption under South Carolina law. See Tr. of Oral Arg. 49; 398 S.C., at 644, n. 19, 731 S.E.2d, at 560, n. 19 ("Under state law, [Biological] Father's consent to the adoption would not have been required"). The South Carolina Supreme Court held, however, that Biological Father is a "parent" under the ICWA and that two statutory provisions—namely, § 1912(f) and § 1912(d)—bar the termination of his parental rights. In this Court, Adoptive Couple contends that Biological Father is not a "parent" and that § 1912(f) and ***2560** § 1912(d) are inapplicable. We need not—and therefore do not—decide whether Biological Father is a "parent." See § 1903(9) (defining "parent").[4] Rather, assuming for the sake of argument that he is a "parent," we hold that neither § 1912(f) nor § 1912(d) bars the termination of his parental rights.

4 If Biological Father is not a "parent" under the ICWA, then § 1912(f) and § 1912(d)—which relate to proceedings involving possible termination of "parental" rights—are inapplicable. Because we conclude that these provisions are inapplicable for other reasons, however, we need not decide whether Biological Father is a "parent."

A

[1] **[2]** Section 1912(f) addresses the involuntary termination of parental rights with respect to an Indian child. Specifically, § 1912(f) provides that "[n]o termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, ... that the *continued custody* of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." (Emphasis added.) The South Carolina Supreme Court held that Adoptive Couple failed to satisfy § 1912(f) because

they did not make a heightened showing that Biological Father's "*prospective* legal and physical custody" would likely result in serious damage to the child. 398 S.C., at 651, 731 S.E.2d, at 564 (emphasis added). That holding was error.

Section 1912(f) conditions the involuntary termination of parental rights on a showing regarding the merits of "*continued* custody of the child by the parent." (Emphasis added.) The adjective "continued" plainly refers to a pre-existing state. As Justice SOTOMAYOR concedes, *post,* at 2577 – 2578 (dissenting opinion) (hereinafter the dissent), "continued" means "[c]arried on or kept up without cessation" or "[e]xtended in space without interruption or breach of conne[ct]ion." Compact Edition of the Oxford English Dictionary 909 (1981 reprint of 1971 ed.) (Compact OED); see also American Heritage Dictionary 288 (1981) (defining "continue" in the following manner: "1. To go on with a particular action or in a particular condition; persist.... 3. To remain in the same state, capacity, or place"); Webster's Third New International Dictionary 493 (1961) (Webster's) (defining "continued" as "stretching out in time or space esp. without interruption"); *Aguilar v. FDIC,* 63 F.3d 1059, 1062 (C.A.11 1995) (*per curiam*) (suggesting that the phrase "continue an action" means "go on with ... an action" that is "preexisting"). The term "continued" also can mean "resumed after interruption." Webster's 493; see American Heritage Dictionary 288. The phrase "continued custody" therefore refers to custody that a parent already has (or at least had at some point in the past). As a result, § 1912(f) does not apply in cases where the Indian parent *never* had custody of the Indian child. [5]

5 With a torrent of words, the dissent attempts to obscure the fact that its interpretation simply cannot be squared with the statutory text. A biological father's "continued custody" of a child cannot be assessed if the father never had custody at all, and the use of a different phrase —"termination of parental rights"—cannot change that. In addition, the dissent's reliance on subsection headings, *post,* at 2560 – 2561, overlooks the fact that those headings were not actually enacted by Congress. See 92 Stat. 3071–3072.

Biological Father's contrary reading of § 1912(f) is nonsensical. Pointing to the provision's requirement that "[n]o termination of parental rights may be ordered ... in the absence of a determination" relating to "the continued custody of the ***2561** child by the parent," Biological Father contends that if a determination relating to "continued custody" is inapposite in cases where there is no "custody," the statutory text *prohibits* termination. See Brief for Respondent Birth Father 39. But it would be absurd to think that Congress enacted a provision that *permits* termination of a custodial parent's rights, while simultaneously *prohibiting* termination of a noncustodial parent's rights. If the statute draws any distinction between custodial and noncustodial parents, that distinction surely does not provide greater protection for noncustodial parents. [6]

6 The dissent criticizes us for allegedly concluding that a biological father qualifies for "substantive" statutory protections "only when [he] has physical or state-recognized legal custody." *Post,* at 2572 – 2573, 2574 – 2575. But the dissent undercuts its own point when it states that "numerous" ICWA provisions not at issue here afford "meaningful" protections to biological fathers regardless of whether they ever had custody. *Post,* at 2573 – 2575, and nn. 1, 2.

[3] Our reading of § 1912(f) comports with the statutory text demonstrating that the primary mischief the ICWA was designed to counteract was the unwarranted *removal* of Indian children from Indian families due to the cultural insensitivity and biases of social workers and state courts. The statutory text expressly highlights the primary problem that the statute was intended to solve: "an alarmingly high percentage of Indian families [were being] broken up by the *removal,* often unwarranted, of their children from them by nontribal public and private agencies." § 1901(4) (emphasis added); see also § 1902 (explaining that the ICWA establishes "minimum Federal standards for the *removal* of Indian children from their families" (emphasis added)); *Holyfield,* 490 U.S., at 32–34, 109 S.Ct. 1597. And if the legislative history of the ICWA is thought to be relevant, it further underscores that the Act was primarily intended to stem the unwarranted removal of Indian children from intact Indian families. See, *e.g.,* H.R.Rep. No. 95–1386, p. 8 (1978) (explaining that, as relevant here, "[t]he purpose of [the ICWA] is to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the *removal* of Indian children from their families and the placement of such children in foster or adoptive homes" (emphasis added)); *id.,* at 9 (decrying the "wholesale separation of Indian children" from their Indian families); *id.,* at 22 (discussing "the removal" of Indian children from their parents pursuant to §§ 1912(e) and (f)). In sum, when, as here, the adoption of an Indian child is voluntarily and lawfully initiated by a non-Indian parent with sole custodial rights, the ICWA's primary goal of preventing the unwarranted removal of

Indian children and the dissolution of Indian families is not implicated.

The dissent fails to dispute that nonbinding guidelines issued by the Bureau of Indian Affairs (BIA) shortly after the ICWA's enactment demonstrate that the BIA envisioned that § 1912(f)'s standard would apply only to termination of a *custodial* parent's rights. Specifically, the BIA stated that, under § 1912(f), "[a] child may not be *removed* simply because there is someone else willing to raise the child who is likely to do a better job"; instead, "[i]t must be shown that ... it is dangerous for the child to *remain* with his or her *present* custodians." Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67593 (1979) (emphasis added) (hereinafter Guidelines). Indeed, the Guidelines recognized that § 1912(f) applies only when there is pre-existing custody to evaluate. ***2562** See *ibid.* ("[T]he issue on which qualified expert testimony is required is the question of whether or not serious damage to the child is likely to occur if the child is not removed").

Under our reading of § 1912(f), Biological Father should not have been able to invoke § 1912(f) in this case, because he had never had legal or physical custody of Baby Girl as of the time of the adoption proceedings. As an initial matter, it is undisputed that Biological Father never had *physical* custody of Baby Girl. And as a matter of both South Carolina and Oklahoma law, Biological Father never had *legal* custody either. See S.C.Code Ann. § 63–17–20(B) (2010) ("Unless the court orders otherwise, the custody of an illegitimate child is solely in the natural mother unless the mother has relinquished her rights to the child"); Okla. Stat., Tit. 10, § 7800 (West Cum.Supp. 2013) ("Except as otherwise provided by law, the mother of a child born out of wedlock has custody of the child until determined otherwise by a court of competent jurisdiction"). [7]

7 In an effort to rebut our supposed conclusion that "Congress *could not* possibly have intended" to require legal termination of Biological Father's rights with respect to Baby Girl, the dissent asserts that a minority of States afford (or used to afford) protection to similarly situated biological fathers. See *post,* at 2580 – 2581, and n. 12 (emphasis added). This is entirely beside the point, because we merely conclude that, based on the statute's text and structure, Congress *did not* extend the heightened protections of § 1912(d) and § 1912(f) to all biological fathers. The fact that state laws may provide certain protections to biological fathers who have abandoned their children and who have never had custody of their children in no way undermines our analysis of these two federal statutory provisions.

In sum, the South Carolina Supreme Court erred in finding that § 1912(f) barred termination of Biological Father's parental rights.

B

[4] **[5]** Section 1912(d) provides that "[a]ny party" seeking to terminate parental rights to an Indian child under state law "shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed *to prevent the breakup of the Indian family* and that these efforts have proved unsuccessful." (Emphasis added.) The South Carolina Supreme Court found that Biological Father's parental rights could not be terminated because Adoptive Couple had not demonstrated that Biological Father had been provided remedial services in accordance with § 1912(d). 398 S.C., at 647–648, 731 S.E.2d, at 562. We disagree.

Consistent with the statutory text, we hold that § 1912(d) applies only in cases where an Indian family's "breakup" would be precipitated by the termination of the parent's rights. The term "breakup" refers in this context to "[t]he discontinuance of a relationship," American Heritage Dictionary 235 (3d ed. 1992), or "an ending as an effective entity," Webster's 273 (defining "breakup" as "a disruption or dissolution into component parts: an ending as an effective entity"). See also Compact OED 1076 (defining "break-up" as, *inter alia,* a "disruption, separation into parts, disintegration"). But when an Indian parent abandons an Indian child prior to birth and that child has never been in the Indian parent's legal or physical custody, there is no "relationship" that would be "discontinu[ed]"—and no "effective entity" that would be "end[ed]"—by the termination of the Indian parent's rights. In such a situation, the "breakup of the Indian family" has long since occurred, and § 1912(d) is inapplicable.

***2563** Our interpretation of § 1912(d) is, like our interpretation of § 1912(f), consistent with the explicit congressional purpose of providing certain "standards for the *removal* of Indian children from their families." § 1902 (emphasis added); see also, *e.g.,* § 1901(4); *Holyfield,* 490 U.S., at 32–34, 109 S.Ct. 1597. In addition, the BIA's Guidelines confirm that remedial services under § 1912(d) are intended "to alleviate the need to *remove* the Indian child

from his or her parents or Indian custodians," not to facilitate a *transfer* of the child *to* an Indian parent. See 44 Fed.Reg., at 67592 (emphasis added).

Our interpretation of § 1912(d) is also confirmed by the provision's placement next to § 1912(e) and § 1912(f), both of which condition the outcome of proceedings on the merits of an Indian child's "continued custody" with his parent. That these three provisions appear adjacent to each other strongly suggests that the phrase "breakup of the Indian family" should be read in harmony with the "continued custody" requirement. See *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988) (explaining that statutory construction "is a holistic endeavor" and that "[a] provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme"). None of these three provisions *creates* parental rights for unwed fathers where no such rights would otherwise exist. Instead, Indian parents who are already part of an "Indian family" are provided with access to "remedial services and rehabilitative programs" under § 1912(d) so that their "custody" might be "continued" in a way that avoids foster-care placement under § 1912(e) or termination of parental rights under § 1912(f). In other words, the provision of "remedial services and rehabilitative programs" under § 1912(d) supports the "continued custody" that is protected by § 1912(e) and § 1912(f). [8]

8 The dissent claims that our reasoning "necessarily extends to *all* Indian parents who have never had custody of their children," even if those parents have visitation rights. *Post,* at 2572 – 2573, 2578 – 2579. As an initial matter, the dissent's concern about the effect of our decision on individuals with visitation rights will be implicated, at most, in a relatively small class of cases. For example, our interpretation of § 1912(d) would implicate the dissent's concern only in the case of a parent who abandoned his or her child prior to birth and *never* had physical or legal custody, but *did* have some sort of visitation rights. Moreover, in cases where this concern is implicated, such parents might receive "comparable" protections under state law. See *post,* at 2579 – 2580. And in any event, it is the *dissent's* interpretation that would have far-reaching consequences: Under the dissent's reading, *any* biological parent—even a sperm donor—would enjoy the heightened protections of § 1912(d) and § 1912(f), even if he abandoned the mother and the child immediately after conception. *Post,* at 2579, n. 8.

Section 1912(d) is a sensible requirement when applied to state social workers who might otherwise be too quick to remove Indian children from their Indian families. It would, however, be unusual to apply § 1912(d) in the context of an Indian parent who abandoned a child prior to birth and who never had custody of the child. The decision below illustrates this point. The South Carolina Supreme Court held that § 1912(d) mandated measures such as "attempting to stimulate [Biological] Father's desire to be a parent." 398 S.C., at 647, 731 S.E.2d, at 562. But if prospective adoptive parents were required to engage in the bizarre undertaking of "stimulat[ing]" a biological father's "desire to be a parent," it would surely dissuade some of them from seeking to ***2564** adopt Indian children. [9] And this would, in turn, unnecessarily place vulnerable Indian children at a unique disadvantage in finding a permanent and loving home, even in cases where neither an Indian parent nor the relevant tribe objects to the adoption. [10]

9 Biological Father and the Solicitor General argue that a tribe or state agency *could* provide the requisite remedial services under § 1912(d). Brief for Respondent Birth Father 43; Brief for United States as *Amicus Curiae* 22. But what if they don't? And if they don't, would the adoptive parents have to undertake the task?

10 The dissent repeatedly mischaracterizes our opinion. As our detailed discussion of the terms of the ICWA makes clear, our decision is not based on a "[p]olicy disagreement with Congress' judgment." *Post,* at 2572 – 2573; see also *post,* at 2575 – 2576, 2583.

In sum, the South Carolina Supreme Court erred in finding that § 1912(d) barred termination of Biological Father's parental rights.

IV

[6] In the decision below, the South Carolina Supreme Court suggested that if it had terminated Biological Father's rights, then § 1915(a)'s preferences for the adoptive placement of an Indian child would have been applicable. 398 S.C., at 655–657, 731 S.E.2d, at 566–567. In so doing, however, the court failed to recognize a critical limitation on the scope of § 1915(a).

Section 1915(a) provides that "[i]n any adoptive placement of an Indian child under State law, 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." Contrary to the South Carolina Supreme Court's suggestion, § 1915(a)'s preferences are inapplicable in cases where no alternative party has formally sought to adopt the child. This is because there simply is no "preference" to apply if no alternative party that is eligible to be preferred under § 1915(a) has come forward.

In this case, Adoptive Couple was the only party that sought to adopt Baby Girl in the Family Court or the South Carolina Supreme Court. See Brief for Petitioners 19, 55; Brief for Respondent Birth Father 48; Reply Brief for Petitioners 13. Biological Father is not covered by § 1915(a) because he did not seek to *adopt* Baby Girl; instead, he argued that his parental rights should not be terminated in the first place. [11] Moreover, Baby Girl's paternal grandparents never sought custody of Baby Girl. See Brief for Petitioners 55; Reply Brief for Petitioners 13; 398 S.C., at 699, 731 S.E.2d, at 590 (Kittredge, J., dissenting) (noting that the "paternal grandparents are not parties to this action"). Nor did other members of the Cherokee Nation or "other Indian families" seek to adopt Baby Girl, even though the Cherokee Nation had notice of—and intervened in—the adoption proceedings. See Brief ***2565** for Respondent Cherokee Nation 21–22; Reply Brief for Petitioners 13–14. [12]

11 Section 1915(c) also provides that, in the case of an adoptive placement under § 1915(a), "if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in [§ 1915(b)]." Although we need not decide the issue here, it may be the case that an Indian child's tribe could alter § 1915's preferences in a way that includes a biological father whose rights were terminated, but who has now reformed. See § 1915(c). If a tribe were to take such an approach, however, the court would still have the power to determine whether "good cause" exists to disregard the tribe's order of preference. See §§ 1915(a), (c); *In re Adoption of T.R.M.*, 525 N.E.2d 298, 313 (Ind.1988).

12 To be sure, an employee of the Cherokee Nation testified that the Cherokee Nation certifies families to be adoptive parents and that there are approximately 100 such families "that are ready to take children that want to be adopted." Record 446. However, this testimony was only a general statement regarding the Cherokee Nation's practices; it did not demonstrate that a specific Indian family was willing to adopt Baby Girl, let alone that such a family formally sought such adoption in the South Carolina courts. See Reply Brief for Petitioners 13–14; see also Brief for Respondent Cherokee Nation 21–22.

* * *

The Indian Child Welfare Act was enacted to help preserve the cultural identity and heritage of Indian tribes, but under the State Supreme Court's reading, the Act would put certain vulnerable children at a great disadvantage solely because an ancestor—even a remote one—was an Indian. As the State Supreme Court read §§ 1912(d) and (f), a biological Indian father could abandon his child *in utero* and refuse any support for the birth mother—perhaps contributing to the mother's decision to put the child up for adoption—and then could play his ICWA trump card at the eleventh hour to override the mother's decision and the child's best interests. If this were possible, many prospective adoptive parents would surely pause before adopting any child who might possibly qualify as an Indian under the ICWA. Such an interpretation would raise equal protection concerns, but the plain text of §§ 1912(f) and (d) makes clear that neither provision applies in the present context. Nor do § 1915(a)'s rebuttable adoption preferences apply when no alternative party has formally sought to adopt the child. We therefore reverse the judgment of the South Carolina Supreme Court and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice THOMAS, concurring.

I join the Court's opinion in full but write separately to explain why constitutional avoidance compels this outcome. Each party in this case has put forward a plausible interpretation of the relevant sections of the Indian Child Welfare Act (ICWA). However, the interpretations offered by respondent Birth Father and the United States raise significant constitutional problems as applied to this case. Because the Court's decision avoids those problems, I concur in its interpretation.

I

This case arises out of a contested state-court adoption proceeding. Adoption proceedings are adjudicated in state family courts across the country every day, and "domestic relations" is "an area that has long been regarded as a virtually exclusive province of the States." *Sosna v. Iowa*, 419 U.S.

393, 404, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). Indeed, "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." *In re Burrus,* 136 U.S. 586, 593–594, 10 S.Ct. 850, 34 L.Ed. 500 (1890). Nevertheless, when Adoptive Couple filed a petition in South Carolina Family Court to finalize their adoption of Baby Girl, Birth Father, who had relinquished his parental rights via a text message to Birth Mother, claimed a federal right under the ICWA to block the adoption and to obtain custody.

The ICWA establishes "federal standards that govern state-court child custody proceedings involving Indian children." *Ante,* at 2557. The ICWA defines "Indian child" as "any unmarried person who is under age eighteen and is either (a) a ***2566** member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. § 1903(4). As relevant, the ICWA defines "child custody proceeding," § 1903(1), to include "adoptive placement," which means "the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption," § 1903(1)(iv), and "termination of parental rights," which means "any action resulting in the termination of the parent-child relationship," § 1903(1)(ii).

The ICWA restricts a state court's ability to terminate the parental rights of an Indian parent in two relevant ways. Section 1912(f) prohibits a state court from involuntarily terminating parental rights "in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." Section 1912(d) prohibits a state court from terminating parental rights until the court is satisfied "that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." A third provision creates specific placement preferences for the adoption of Indian children, which favor placement with Indians over other adoptive families. § 1915(a). Operating together, these requirements often lead to different outcomes than would result under state law. That is precisely what happened here. See *ante,* at 2559 ("It is undisputed that, had Baby Girl not been 3/256 Cherokee, Biological Father would have had no right to object to her adoption under South Carolina law").

The ICWA recognizes States' inherent "jurisdiction over Indian child custody proceedings," § 1901(5), but asserts that federal regulation is necessary because States "have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families," *ibid.* However, Congress may regulate areas of traditional state concern only if the Constitution grants it such power. Admt. 10 ("The 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"). The threshold question, then, is whether the Constitution grants Congress power to override state custody law whenever an Indian is involved.

II

The ICWA asserts that the Indian Commerce Clause, Art. I, § 8, cl. 3, and "other constitutional authority" provides Congress with "plenary power over Indian affairs." § 1901(1). The reference to "other constitutional authority" is not illuminating, and I am aware of no other enumerated power that could even arguably support Congress' intrusion into this area of traditional state authority. See Fletcher, The Supreme Court and Federal Indian Policy, 85 Neb. L.Rev. 121, 137 (2006) ("As a matter of federal constitutional law, the Indian Commerce Clause grants Congress the only explicit constitutional authority to deal with Indian tribes"); Natelson, The Original Understanding of the Indian Commerce Clause, 85 Denver U.L.Rev. 201, 210 (2007) (hereinafter Natelson) (evaluating, and rejecting, other potential sources of authority supporting congressional power over Indians). The assertion of plenary authority must, therefore, stand or fall on Congress' power under the Indian Commerce Clause. Although this Court has said that the "central function of ***2567** the Indian Commerce Clause is to provide Congress with plenary power to legislate in the field of Indian affairs," *Cotton Petroleum Corp. v. New Mexico,* 490 U.S. 163, 192, 109 S.Ct. 1698, 104 L.Ed.2d 209 (1989), neither the text nor the original understanding of the Clause supports Congress' claim to such "plenary" power.

A

The Indian Commerce Clause gives Congress authority "[t]o regulate *Commerce* ... with the Indian tribes." Art. I, § 8, cl. 3 (emphasis added). "At the time the original Constitution was ratified, 'commerce' consisted of selling, buying, and

bartering, as well as transporting for these purposes." *United States v. Lopez,* 514 U.S. 549, 585, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995) (THOMAS, J., concurring). See also 1 S. Johnson, A Dictionary of the English Language 361 (4th rev. ed. 1773) (reprint 1978) (defining commerce as "Intercourse; exchange of one thing for another; interchange of any thing; trade; traffick"). "[W]hen Federalists and Anti–Federalists discussed the Commerce Clause during the ratification period, they often used trade (in its selling/bartering sense) and commerce interchangeably." *Lopez, supra,* at 586, 115 S.Ct. 1624 (THOMAS, J., concurring). The term "commerce" did not include economic activity such as "manufacturing and agriculture," *ibid.,* let alone noneconomic activity such as adoption of children.

Furthermore, the term "commerce with Indian tribes" was invariably used during the time of the founding to mean " 'trade with Indians.' " See, *e.g.,* Natelson, 215–216, and n. 97 (citing 18th-century sources); Report of Committee on Indian Affairs (Feb. 20, 1787), in 32 Journals of the Continental Congress 1774–1789, pp. 66, 68 (R. Hill ed. 1936) (hereinafter J. Cont'l Cong.) (using the phrase "commerce with the Indians" to mean trade with the Indians). And regulation of Indian commerce generally referred to legal structures governing "the conduct of the merchants engaged in the Indian trade, the nature of the goods they sold, the prices charged, and similar matters." Natelson 216, and n. 99.

The Indian Commerce Clause contains an additional textual limitation relevant to this case: Congress is given the power to regulate Commerce "with the Indian *tribes*." The Clause does not give Congress the power to regulate commerce with all Indian *persons* any more than the Foreign Commerce Clause gives Congress the power to regulate commerce with all foreign nationals traveling within the United States. A straightforward reading of the text, thus, confirms that Congress may only regulate commercial interactions—"commerce"—taking place with established Indian communities—"tribes." That power is far from "plenary."

B

Congress' assertion of "plenary power" over Indian affairs is also inconsistent with the history of the Indian Commerce Clause. At the time of the founding, the Clause was understood to reserve to the States general police powers with respect to Indians who were citizens of the several States. The Clause instead conferred on Congress the much narrower power to regulate trade with Indian tribes—that is, Indians who had not been incorporated into the body-politic of any State.

1

Before the Revolution, most Colonies adopted their own regulations governing Indian trade. See Natelson 219, and n. 121 (citing colonial laws). Such regulations were necessary because colonial traders all too often abused their Indian trading partners, through fraud, exorbitant ***2568** prices, extortion, and physical invasion of Indian territory, among other things. See 1 F. Prucha, The Great Father 18–20 (1984) (hereinafter Prucha); Natelson 220, and n. 122. These abuses sometimes provoked violent Indian retaliation. See Prucha 20. To mitigate these conflicts, most Colonies extensively regulated traders engaged in commerce with Indian tribes. See *e.g.,* Ordinance to Regulate Indian Affairs, Statutes of South Carolina (Aug. 31, 1751), in 16 Early American Indian Documents: Treaties and Laws, 1607–1789, pp. 331–334 (A. Vaughan and D. Rosen eds. 1998). [1] Over time, commercial regulation at the colonial level proved largely ineffective, in part because "[t]here was no uniformity among the colonies, no two sets of like regulations." Prucha 21.

1 South Carolina, for example, required traders to be licensed, to be of good moral character, and to post a bond. Ordinance to Regulate Indian Affairs, in 16 Early American Indian Documents, at 331–334. A potential applicant's name was posted publicly before issuing the license, so anyone with objections had an opportunity to raise them. *Id.,* at 332. Restrictions were placed on employing agents, *id.,* at 333–334, and names of potential agents had to be disclosed. *Id.,* at 333. Traders who violated these rules were subject to substantial penalties. *Id.,* at 331, 334.

Recognizing the need for uniform regulation of trade with the Indians, Benjamin Franklin proposed his own "articles of confederation" to the Continental Congress on July 21, 1775, which reflected his view that central control over Indian affairs should predominate over local control. 2 J. Cont'l Cong. 195–199 (W. Ford ed. 1905). Franklin's proposal was not enacted, but in November 1775, Congress empowered a committee to draft regulations for the Indian trade. 3 *id.,* at 364, 366. On July 12, 1776, the committee submitted a draft of the Articles of Confederation to Congress, which incorporated many of Franklin's proposals. 5 *id.,* at 545, 546,

n. 1. The draft prohibited States from waging offensive war against the Indians without congressional authorization and granted Congress the exclusive power to acquire land from the Indians outside state boundaries, once those boundaries had been established. *Id.,* at 549. This version also gave Congress "the sole and exclusive Right and Power of ... Regulating the Trade, and managing all Affairs with the Indians." *Id.* at 550.

On August 20, 1776, the Committee of the Whole presented to Congress a revised draft, which provided Congress with "the sole and exclusive right and power of ... regulating the trade, and managing all affairs with the Indians." *Id.,* at 672, 681–682. Some delegates feared that the Articles gave Congress excessive power to interfere with States' jurisdiction over affairs with Indians residing within state boundaries. After further deliberation, the final result was a clause that included a broad grant of congressional authority with two significant exceptions: "The United States in Congress assembled shall also have the sole and exclusive right and power of ... regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated." Articles of Confederation, Art. IX, cl. 4. As a result, Congress retained exclusive jurisdiction over Indian affairs outside the borders of the States; the States retained exclusive jurisdiction over relations with Member–Indians; [2] and Congress and ***2569** the States "exercise[d] concurrent jurisdiction over transactions with tribal Indians within state boundaries, but congressional decisions would have to be in compliance with local law." Natelson 230. The drafting of the Articles of Confederation reveals the delegates' concern with protecting the power of the States to regulate Indian persons who were politically incorporated into the States. This concern for state power reemerged during the drafting of the Constitution.

2 Although Indians were generally considered "members" of a State if they paid taxes or were citizens, see Natelson 230, the precise definition of the term was "not yet settled" at the time of the founding and was "a question of frequent perplexity and contention in the federal councils," The Federalist No. 42, p. 265 (C. Rossiter ed. 1961) (J. Madison).

2

The drafting history of the Constitutional Convention also supports a limited construction of the Indian Commerce Clause. On July 24, 1787, the convention elected a drafting committee—the Committee of Detail—and charged it to "report a Constitution conformable to the Resolutions passed by the Convention." 2 Records of the Federal Convention of 1787, p. 106 (M. Farrand rev. 1966) (J. Madison). During the Committee's deliberations, John Rutledge, the chairman, suggested incorporating an Indian affairs power into the Constitution. *Id.,* at 137, n. 6, 143. The first draft reported back to the convention, however, provided Congress with authority "[t]o regulate commerce with foreign nations, and among the several States," *id.,* at 181 (Madison) (Aug. 6, 1787), but did not include any specific Indian affairs clause. On August 18, James Madison proposed that the Federal Government be granted several additional powers, including the power "[t]o regulate *affairs* with the Indians as well within as without the limits of the U. States." *Id.,* at 324 (J. Madison) (emphasis added). On August 22, Rutledge delivered the Committee of Detail's second report, which modified Madison's proposed clause. The Committee proposed to add to Congress' power "[t]o regulate commerce with foreign nations, and among the several States" the words, "and with Indians, within the Limits of any State, not subject to the laws thereof." *Id.,* at 366–367 (Journal). The Committee's version, which echoed the Articles of Confederation, was far narrower than Madison's proposal. On August 31, the revised draft was submitted to a Committee of Eleven for further action. *Id.,* at 473 (Journal), 481 (J. Madison). That Committee recommended adding to the Commerce Clause the phrase, "and with the Indian tribes," *id.,* at 493, which the Convention ultimately adopted.

It is, thus, clear that the Framers of the Constitution were alert to the difference between the power to regulate trade with the Indians and the power to regulate all Indian affairs. By limiting Congress' power to the former, the Framers declined to grant Congress the same broad powers over Indian affairs conferred by the Articles of Confederation. See Prakash, Against Tribal Fungibility, 89 Cornell L.Rev. 1069, 1090 (2004).

During the ratification debates, opposition to the Indian Commerce Clause was nearly nonexistent. See Natelson 248 (noting that Robert Yates, a New York Anti–Federalist was "almost the only writer who objected to any part [of] of the Commerce Clause—a clear indication that its scope was understood to be fairly narrow" (footnote omitted)). Given the Anti–Federalists' vehement opposition to the Constitution's other grants of power to the Federal Government, this silence is revealing. The ratifiers almost certainly understood the

Clause to confer a relatively modest power on Congress—namely, the power to regulate trade with Indian tribes living beyond state borders. And this feature of the Constitution was welcomed by Federalists and Anti–Federalists alike due to the considerable interest in expanding trade with such Indian tribes. See, *e.g.,* The Federalist No. 42, at 265 (J. Madison) ***2570** (praising the Constitution for removing the obstacles that had existed under the Articles of Confederation to federal control over "*trade* with Indians" (emphasis added)); 3 J. Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution 580 (2d ed. 1863) (Adam Stephens, at the Virginia ratifying convention, June 23, 1788, describing the Indian tribes residing near the Mississippi and "the variety of articles which might be obtained to advantage by trading with these people"); The Federalist No. 24, at 158 (A. Hamilton) (arguing that frontier garrisons would "be keys to the trade with the Indian nations"); Brutus, (Letter) X, N.Y. J., Jan. 24, 1788, in 15 The Documentary History of the Ratification of the Constitution 462, 465 (J. Kaminski & G. Saladino eds. 2012) (conceding that there must be a standing army for some purposes, including "trade with Indians"). There is little evidence that the ratifiers of the Constitution understood the Indian Commerce Clause to confer anything resembling plenary power over Indian affairs. See Natelson 247–250.

III

In light of the original understanding of the Indian Commerce Clause, the constitutional problems that would be created by application of the ICWA here are evident. First, the statute deals with "child custody proceedings," § 1903(1), not "commerce." It was enacted in response to concerns that "an alarmingly high percentage of Indian families [were] broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies." § 1901(4). The perceived problem was that many Indian children were "placed in non-Indian foster and adoptive homes and institutions." *Ibid.* This problem, however, had nothing to do with commerce.

Second, the portions of the ICWA at issue here do not regulate Indian tribes as tribes. Sections 1912(d) and (f), and § 1915(a) apply to all child custody proceedings involving an Indian child, regardless of whether an Indian tribe is involved. This case thus does not directly implicate Congress' power to "legislate in respect to Indian *tribes*." *United States v. Lara,* 541 U.S. 193, 200, 124 S.Ct. 1628, 158 L.Ed.2d 420 (2004) (emphasis added). Baby Girl was never domiciled on an Indian Reservation, and the Cherokee Nation had no jurisdiction over her. Cf. *Mississippi Band of Choctaw Indians v. Holyfield,* 490 U.S. 30, 53–54, 109 S.Ct. 1597, 104 L.Ed.2d 29 (1989) (holding that the Indian Tribe had exclusive jurisdiction over child custody proceedings, even though the children were born off the reservation, because the children were "domiciled" on the reservation for purposes of the ICWA). Although Birth Father is a registered member of The Cherokee Nation, he did not live on a reservation either. He was, thus, subject to the laws of the State in which he resided (Oklahoma) and of the State where his daughter resided during the custody proceedings (South Carolina). Nothing in the Indian Commerce Clause permits Congress to enact special laws applicable to Birth Father merely because of his status as an Indian. [3]

3 Petitioners and the guardian ad litem contend that applying the ICWA to child custody proceedings on the basis of race implicates equal protection concerns. See Brief for Petitioners 45 (arguing that the statute would be unconstitutional "if unwed fathers with no preexisting substantive parental rights receive a statutory preference based solely on the Indian child's race"); Brief for Respondent Guardian Ad Litem 48–49 (same). I need not address this argument because I am satisfied that Congress lacks authority to regulate the child custody proceedings in this case.

***2571** Because adoption proceedings like this one involve neither "commerce" nor "Indian tribes," there is simply no constitutional basis for Congress' assertion of authority over such proceedings. Also, the notion that Congress can direct state courts to apply different rules of evidence and procedure merely because a person of Indian descent is involved raises absurd possibilities. Such plenary power would allow Congress to dictate specific rules of criminal procedure for state-court prosecutions against Indian defendants. Likewise, it would allow Congress to substitute federal law for state law when contract disputes involve Indians. But the Constitution does not grant Congress power to override state law whenever that law happens to be applied to Indians. Accordingly, application of the ICWA to these child custody proceedings would be unconstitutional.

* * *

Because the Court's plausible interpretation of the relevant sections of the ICWA avoids these constitutional problems, I concur.

Justice BREYER, concurring.

I join the Court's opinion with three observations. First, the statute does not directly explain how to treat an absentee Indian father who had next-to-no involvement with his child in the first few months of her life. That category of fathers may include some who would prove highly unsuitable parents, some who would be suitable, and a range of others in between. Most of those who fall within that category seem to fall outside the scope of the language of 25 U.S.C. §§ 1912(d) and (f). Thus, while I agree that the better reading of the statute is, as the majority concludes, to exclude most of those fathers, *ante,* at 2569, 2571, I also understand the risk that, from a policy perspective, the Court's interpretation could prove to exclude too many. See *post,* at 2578, 2583 – 2584 (SOTOMAYOR, J., dissenting).

Second, we should decide here no more than is necessary. Thus, this case does not involve a father with visitation rights or a father who has paid "all of his child support obligations." See *post,* at 2578. Neither does it involve special circumstances such as a father who was deceived about the existence of the child or a father who was prevented from supporting his child. See *post,* at 2578 – 2579 n. 8. The Court need not, and in my view does not, now decide whether or how §§ 1912(d) and (f) apply where those circumstances are present.

Third, other statutory provisions not now before us may nonetheless prove relevant in cases of this kind. Section 1915(a) grants an adoptive "preference" to "(1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.... in the absence of good cause to the contrary." Further, § 1915(c) allows the "Indian child's tribe" to "establish a different order of preference by resolution." Could these provisions allow an absentee father to reenter the special statutory order of preference with support from the tribe, and subject to a court's consideration of "good cause?" I raise, but do not here try to answer, the question.

Justice SCALIA, dissenting.

I join Justice SOTOMAYOR's dissent except as to one detail. I reject the conclusion that the Court draws from the words "continued custody" in 25 U.S. C § 1912(f) not because "literalness may strangle meaning," see *post,* at 2577, but because there is no reason that "continued" must refer to custody in the past rather than custody in the future. I read the provision as requiring the court to satisfy itself (beyond a reasonable doubt) ***2572** not merely that initial or temporary custody is not "likely to result in serious emotional or physical damage to the child," but that continued custody is not likely to do so. See Webster's New International Dictionary 577 (2d ed. 1950) (defining "continued" as "[p]rotracted in time or space, esp. without interruption; constant"). For the reasons set forth in Justice SOTOMAYOR's dissent, that connotation is much more in accord with the rest of the statute.

While I am at it, I will add one thought. The Court's opinion, it seems to me, needlessly demeans the rights of parenthood. It has been the constant practice of the common law to respect the entitlement of those who bring a child into the world to raise that child. We do not inquire whether leaving a child with his parents is "in the best interest of the child." It sometimes is not; he would be better off raised by someone else. But parents have their rights, no less than children do. This father wants to raise his daughter, and the statute amply protects his right to do so. There is no reason in law or policy to dilute that protection.

Justice SOTOMAYOR, with whom Justice GINSBURG and Justice KAGAN join, and with whom Justice SCALIA joins in part, dissenting.

A casual reader of the Court's opinion could be forgiven for thinking this an easy case, one in which the text of the applicable statute clearly points the way to the only sensible result. In truth, however, the path from the text of the Indian Child Welfare Act of 1978 (ICWA) to the result the Court reaches is anything but clear, and its result anything but right.

The reader's first clue that the majority's supposedly straightforward reasoning is flawed is that not all Members who adopt its interpretation believe it is compelled by the text of the statute, see *ante,* at 2565 (THOMAS, J., concurring); nor are they all willing to accept the consequences it will necessarily have beyond the specific factual scenario confronted here, see *ante,* at 2571 (BREYER, J., concurring). The second clue is that the majority begins its analysis by plucking out of context a single phrase from the last clause of the last subsection of the relevant provision, and then builds its entire argument upon it. That is not how we ordinarily read statutes. The third clue is that the majority openly professes its aversion to Congress' explicitly stated purpose in enacting the statute. The majority expresses concern that reading the Act to mean what it says will make it more difficult to place Indian children in adoptive homes, see *ante,* at 2563 –

2564, 2564 – 2565, but the Congress that enacted the statute announced its intent to stop "an alarmingly high percentage of Indian families [from being] broken up" by, among other things, a trend of "plac[ing] [Indian children] in non-Indian ... adoptive homes." 25 U.S.C. § 1901(4). Policy disagreement with Congress' judgment is not a valid reason for this Court to distort the provisions of the Act. Unlike the majority, I cannot adopt a reading of ICWA that is contrary to both its text and its stated purpose. I respectfully dissent.

I

Beginning its reading with the last clause of § 1912(f), the majority concludes that a single phrase appearing there —"continued custody"—means that the entirety of the subsection is inapplicable to any parent, however committed, who has not previously had physical or legal custody of his child. Working back to front, the majority then concludes that § 1912(d), tainted by its association with § 1912(f), is also inapplicable; in the majority's view, a family bond that does not take custodial form is not a family bond worth preserving ***2573** from "breakup." Because there are apparently no limits on the contaminating power of this single phrase, the majority does not stop there. Under its reading, § 1903(9), which makes biological fathers "parent[s]" under this federal statute (and where, again, the phrase "continued custody" does not appear), has substantive force only when a birth father has physical or state-recognized legal custody of his daughter.

When it excludes noncustodial biological fathers from the Act's substantive protections, this textually backward reading misapprehends ICWA's structure and scope. Moreover, notwithstanding the majority's focus on the perceived parental shortcomings of Birth Father, its reasoning necessarily extends to *all* Indian parents who have never had custody of their children, no matter how fully those parents have embraced the financial and emotional responsibilities of parenting. The majority thereby transforms a statute that was intended to provide uniform federal standards for child custody proceedings involving Indian children and their biological parents into an illogical piecemeal scheme.

A

Better to start at the beginning and consider the operation of the statute as a whole. Cf. *ante,* at 2563 ("[S]tatutory construction 'is a holistic endeavor[,]' and ... '[a] provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme' " (quoting *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd.,* 484 U.S. 365, 371, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988))).

ICWA commences with express findings. Congress recognized that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children," 25 U.S.C. § 1901(3), and it found that this resource was threatened. State authorities insufficiently sensitive to "the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families" were breaking up Indian families and moving Indian children to non-Indian homes and institutions. See §§ 1901(4)-(5). As § 1901(4) makes clear, and as this Court recognized in *Mississippi Band of Choctaw Indians v. Holyfield,* 490 U.S. 30, 33, 109 S.Ct. 1597, 104 L.Ed.2d 29 (1989), adoptive placements of Indian children with non-Indian families contributed significantly to the overall problem. See § 1901(4) (finding that "an alarmingly high percentage of [Indian] children are placed in non-Indian ... adoptive homes").

Consistent with these findings, Congress declared its purpose "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" applicable to child custody proceedings involving Indian children. § 1902. Section 1903 then goes on to establish the reach of these protections through its definitional provisions. For present purposes, two of these definitions are crucial to understanding the statute's full scope.

First, ICWA defines the term "parent" broadly to mean "any biological parent ... of an Indian child or any Indian person who has lawfully adopted an Indian child." § 1903(9). It is undisputed that Baby Girl is an "Indian child" within the meaning of the statute, see § 1903(4); *ante,* at 2557, n. 1, and Birth Father consequently qualifies as a "parent" under the Act. The statutory definition of parent "does not include the unwed father where paternity has not been acknowledged or established," § 1903(9), but Birth Father's biological paternity has never been questioned by any party and was confirmed by a DNA test during the ***2574** state court proceedings, App. to Pet. for Cert. 109a (Sealed).

Petitioners and Baby Girl's guardian ad litem devote many pages of briefing to arguing that the term "parent" should be

defined with reference to the law of the State in which an ICWA child custody proceeding takes place. See Brief for Petitioners 19–29; Brief for Respondent Guardian Ad Litem 32–41. These arguments, however, are inconsistent with our recognition in *Holyfield* that Congress intended the critical terms of the statute to have uniform federal definitions. See 490 U.S., at 44–45, 109 S.Ct. 1597. It is therefore unsurprising, although far from unimportant, that the majority assumes for the purposes of its analysis that Birth Father is an ICWA "parent." See *ante,* at 2559 – 2560.

Second, the Act's comprehensive definition of "child custody proceeding" includes not only " 'adoptive placement[s],' " " 'preadoptive placement[s],' " and " 'foster care placement[s],' " but also " 'termination of parental rights' " proceedings. § 1903(1). This last category encompasses "*any* action resulting in the termination of the *parent-child relationship,*" § 1903(1)(ii) (emphasis added). So far, then, it is clear that Birth Father has a federally recognized status as Baby Girl's "parent" and that his "parent-child relationship" with her is subject to the protections of the Act.

These protections are numerous. Had Birth Father petitioned to remove this proceeding to tribal court, for example, the state court would have been obligated to transfer it absent an objection from Birth Mother or good cause to the contrary. See § 1911(b). Any voluntary consent Birth Father gave to Baby Girl's adoption would have been invalid unless written and executed before a judge and would have been revocable up to the time a final decree of adoption was entered. [1] See §§ 1913(a), (c). And § 1912, the center of the dispute here, sets forth procedural and substantive standards applicable in "involuntary proceeding[s] in a State court," including foster care placements of Indian children and termination of parental rights proceedings. § 1912(a). I consider § 1912's provisions in order.

1 For this reason, the South Carolina Supreme Court held that Birth Father did not give valid consent to Baby Girl's adoption when, four months after her birth, he signed papers stating that he accepted service and was not contesting the adoption. See 398 S.C. 625, 645–646, 731 S.E.2d 550, 561 (2012). See also *ante,* at 2558 – 2559. Petitioners do not challenge this aspect of the South Carolina court's holding.

Section 1912(a) requires that any party seeking "termination of parental rights t[o] an Indian child" provide notice to both the child's "parent or Indian custodian" and the child's tribe "of the pending proceedings and of their right of intervention." Section 1912(b) mandates that counsel be provided for an indigent "parent or Indian custodian" in any "termination proceeding." Section 1912(c) also gives all "part[ies]" to a termination proceeding—which, thanks to §§ 1912(a) and (b), will always include a biological father if he desires to be present—the right to inspect all material "reports or other documents filed with the court." By providing notice, counsel, and access to relevant documents, the statute ensures a biological father's meaningful participation in an adoption proceeding where the termination of his parental rights is at issue.

These protections are consonant with the principle, recognized in our cases, that the biological bond between parent and child is meaningful. "[A] natural parent's desire for and right to the companionship, care, custody, and management of his or her children," we have explained, "is an interest far more precious than any property ***2575** right." *Santosky v. Kramer,* 455 U.S. 745, 758–759, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (internal quotation marks omitted). See also *infra,* at 2581 – 2583. Although the Constitution does not compel the protection of a biological father's parent-child relationship until he has taken steps to cultivate it, this Court has nevertheless recognized that "the biological connection ... offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring." *Lehr v. Robertson,* 463 U.S. 248, 262, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983). Federal recognition of a parent-child relationship between a birth father and his child is consistent with ICWA's purpose of providing greater protection for the familial bonds between Indian parents and their children than state law may afford.

The majority does not and cannot reasonably dispute that ICWA grants biological fathers, as "parent[s]," the right to be present at a termination of parental rights proceeding and to have their views and claims heard there. [2] But the majority gives with one hand and takes away with the other. Having assumed a uniform federal definition of "parent" that confers certain procedural rights, the majority then illogically concludes that ICWA's *substantive* protections are available only to a subset of "parent[s]": those who have previously had physical or state-recognized legal custody of his or her child. The statute does not support this departure.

2 Petitioners concede that, assuming Birth Father is a "parent" under ICWA, the notice and counsel provisions of 25 U.S.C. §§ 1912(a) and (b) apply to him. See Tr. of Oral Arg. 13.

Section 1912(d) provides that

> "Any party seeking to effect a foster care placement of, or *termination of parental rights to,* an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." (Emphasis added.)

In other words, subsection (d) requires that an attempt be made to cure familial deficiencies before the drastic measures of foster care placement or termination of parental rights can be taken.

The majority would hold that the use of the phrase "breakup of the Indian family" in this subsection means that it does not apply where a birth father has not previously had custody of his child. *Ante,* at 2562 – 2563. But there is nothing about this capacious phrase that licenses such a narrowing construction. As the majority notes, "breakup" means " '[t]he discontinuance of a relationship.' " *Ante,* at 2562 (quoting American Heritage Dictionary 235 (3d ed. 1992)). So far, all of § 1912's provisions expressly apply in actions aimed at terminating the "parent-child relationship" that exists between a birth father and his child, and they extend to it meaningful protections. As a logical matter, that relationship is fully capable of being preserved via remedial services and rehabilitation programs. See *infra,* at 2564 – 2565. Nothing in the text of subsection (d) indicates that this blood relationship should be excluded from the category of familial "relationships" that the provision aims to save from "discontinuance."

The majority, reaching the contrary conclusion, asserts baldly that "when an Indian parent abandons an Indian child prior to birth and that child has never been in the Indian parent's legal or physical custody, there is no 'relationship' that would be 'discontinu[ed]' ... by the termination of the Indian parent's rights." *Ante,* at 2565. ***2576** Says who? Certainly not the statute. Section 1903 recognizes Birth Father as Baby Girl's "parent," and, in conjunction with ICWA's other provisions, it further establishes that their "parent-child relationship" is protected under federal law. In the face of these broad definitions, the majority has no warrant to substitute its own policy views for Congress' by saying that "no 'relationship' " exists between Birth Father and Baby Girl simply because, based on the hotly contested facts of this case, it views their family bond as insufficiently substantial to deserve protection.[3] *Ibid.*

[3] The majority's discussion of § 1912(d) repeatedly references Birth Father's purported "abandon[ment]" of Baby Girl, *ante,* at 2562 – 2563, 2563, n. 8, 2563 – 2564, and it contends that its holding with regard to this provision is limited to such circumstances, see *ante,* at 2563, n. 8; see also *ante,* at 2571 (BREYER, J., concurring). While I would welcome any limitations on the majority's holding given that it is contrary to the language and purpose of the statute, the majority never explains either the textual basis or the precise scope of its "abandon[ment]" limitation. I expect that the majority's inexact use of the term "abandon [ment]" will sow confusion, because it is a commonly used term of art in state family law that does not have a uniform meaning from State to State. See generally 1 J. Hollinger, Adoption Law and Practice § 4.04[1][a][ii] (2012) (discussing various state-law standards for establishing parental abandonment of a child).

The majority states that its "interpretation of § 1912(d) is ... confirmed by the provision's placement next to § 1912(e) and § 1912(f)," both of which use the phrase " 'continued custody.' " *Ante,* at 2563. This is the only aspect of the majority's argument regarding § 1912(d) that is based on ICWA's actual text rather than layers of assertion superimposed on the text; but the conclusion the majority draws from the juxtaposition of these provisions is exactly backward.

Section 1912(f) is paired with § 1912(e), and as the majority notes, both come on the heels of the requirement of rehabilitative efforts just reviewed. The language of the two provisions is nearly identical; subsection (e) is headed "Foster care placement orders," and subsection (f), the relevant provision here, is headed "Parental rights termination orders." Subsection (f) reads in its entirety,

> "No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." § 1912(f).[4]

[4] The full text of subsection (e) is as follows:
> "No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the

> continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." § 1912(e).

The immediate inference to be drawn from the statute's structure is that subsections (e) and (f) work in tandem with the rehabilitative efforts required by (d). Under subsection (d), state authorities must attempt to provide "remedial services and rehabilitative programs" aimed at avoiding foster care placement or termination of parental rights; (e) and (f), in turn, bar state authorities from ordering foster care or terminating parental rights until these curative efforts have failed and it is established that the child will suffer "serious emotional or physical damage" if his or her familial situation is not altered. Nothing in subsections (a) through (d) suggests a limitation on the types of parental relationships ***2577** that are protected by any of the provisions of § 1912, and there is nothing in the structure of § 1912 that would lead a reader to expect subsection (e) or (f) to introduce any such qualification. Indeed, both subsections, in their opening lines, refer back to the prior provisions of § 1912 with the phrase "in such proceeding." This language indicates, quite logically, that in actions where subsections (a), (b), (c), and (d) apply, (e) and (f) apply too. [5]

5 For these reasons, I reject the argument advanced by the United States that subsection (d) applies in the circumstances of this case but subsection (f) does not. See Brief for United States as *Amicus Curiae* 24–26. The United States' position is contrary to the interrelated nature of §§ 1912(d), (e), and (f). Under the reading that the United States proposes, in a case such as this one the curative provision would stand alone; ICWA would provide no evidentiary or substantive standards by which to measure whether foster care placement or termination of parental rights could be ordered in the event that rehabilitative efforts did not succeed. Such a scheme would be oddly incomplete.

All this, and still the most telling textual evidence is yet to come: The text of the subsection begins by announcing, "[n]o termination of parental rights may be ordered" unless the specified evidentiary showing is made. To repeat, a "termination of parental rights" includes "*any* action resulting in the termination of the parent-child relationship," 25 U.S.C. § 1903(1)(ii) (emphasis added), including the relationship Birth Father, as an ICWA "parent," has with Baby Girl. The majority's reading disregards the Act's sweeping definition of "termination of parental rights," which is not limited to terminations of custodial relationships.

The entire foundation of the majority's argument that subsection (f) does not apply is the lonely phrase "continued custody." It simply cannot bear the interpretive weight the majority would place on it.

Because a primary dictionary definition of "continued" is " 'carried on or kept up without cessation,' " *ante,* at 2560 (brackets omitted), the majority concludes that § 1912(f) "does not apply in cases where the Indian parent *never* had custody of the Indian child," *ante,* at 2560. Emphasizing that Birth Father never had physical custody or, under state law, legal custody of Baby Girl, the majority finds the statute inapplicable here. *Ante,* at 2576 – 2578. But "literalness may strangle meaning." *Utah Junk Co. v. Porter,* 328 U.S. 39, 44, 66 S.Ct. 889, 90 L.Ed. 1071 (1946). See also *Robinson v. Shell Oil Co.,* 519 U.S. 337, 341–345, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997) (noting that a term that may "[a]t first blush" seem unambiguous can prove otherwise when examined in the context of the statute as a whole). [6] In light of the structure of § 1912, which indicates that subsection (f) is applicable to the same actions to which subsections (a) through (d) are applicable; the use of the phrase "such proceeding[s]" at the start of subsection (f) to reinforce this structural inference; and finally, the provision's explicit statement that it applies to "termination of parental rights" proceedings, the necessary conclusion is that the word "custody" does not strictly denote a state-recognized custodial relationship. If one refers back to the Act's definitional section, this conclusion is not surprising. Section 1903(1) includes "any action resulting in the termination of the parent-child relationship" within the meaning of "child custody proceeding," thereby belying any congressional ***2578** intent to give the term "custody" a narrow and exclusive definition throughout the statute.

6 The majority's interpretation is unpersuasive even if one focuses exclusively on the phrase "continued custody" because, as Justice SCALIA explains, *ante,* at 2571 – 2572 (dissenting opinion), nothing about the adjective "continued" mandates the retrospective, rather than prospective, application of § 1912(f)'s standard.

In keeping with § 1903(1) and the structure and language of § 1912 overall, the phrase "continued custody" is most sensibly read to refer generally to the continuation of the parent-child relationship that an ICWA "parent" has with his or her child. A court applying § 1912(f) where the parent does not have pre-existing custody should, as Birth Father argues, determine whether the party seeking termination of parental rights has established that the continuation of the

parent-child relationship will result in "serious emotional or physical damage to the child." [7]

7 The majority overlooks Birth Father's principal arguments when it dismisses his reading of § 1912(f) as "nonsensical." *Ante,* at 2560. He does argue that *if* one accepts petitioners' view that it is impossible to make a determination of likely harm when a parent lacks custody, *then* the consequence would be that " '[n]o termination of parental rights may be ordered.' " Brief for Respondent Birth Father 39 (quoting § 1912(f)). But Birth Father's primary arguments assume that it is indeed possible to make a determination of likely harm in the circumstances of this case, and that parental rights can be terminated if § 1912(f) is met. See *id.*, at 40–42.

The majority is willing to assume, for the sake of argument, that Birth Father is a "parent" within the meaning of ICWA. But the majority fails to account for all that follows from that assumption. The majority repeatedly passes over the term "termination of parental rights" that, as defined by § 1903, clearly encompasses an action aimed at severing Birth Father's "parent-child relationship" with Baby Girl. The majority chooses instead to focus on phrases not statutorily defined that it then uses to exclude Birth Father from the benefits of his parental status. When one must disregard a statute's use of terms that have been explicitly defined by Congress, that should be a signal that one is distorting, rather than faithfully reading, the law in question.

B

The majority also does not acknowledge the full implications of its assumption that there are some ICWA "parent[s]" to whom §§ 1912(d) and (f) do not apply. Its discussion focuses on Birth Father's particular actions, but nothing in the majority's reasoning limits its manufactured class of semiprotected ICWA parents to biological fathers who failed to support their child's mother during pregnancy. Its logic would apply equally to noncustodial fathers who have actively participated in their child's upbringing.

Consider an Indian father who, though he has never had custody of his biological child, visits her and pays all of his child support obligations. [8] Suppose that, due to ***2579** deficiencies in the care the child received from her custodial parent, the State placed the child with a foster family and proposed her ultimate adoption by them. Clearly, the father's parental rights would have to be terminated before the adoption could go forward. [9] On the majority's view, notwithstanding the fact that this father would be a "parent" under ICWA, he would not receive the benefit of either § 1912(d) or § 1912(f). Presumably the court considering the adoption petition would have to apply some standard to determine whether termination of his parental rights was appropriate. But from whence would that standard come?

8 The majority attempts to minimize the consequences of its holding by asserting that the parent-child relationships of noncustodial fathers with visitation rights will be at stake in an ICWA proceeding in only "a relatively small class of cases." *Ante,* at 2563, n. 8. But it offers no support for this assertion, beyond speculating that there will not be many fathers affected by its interpretation of § 1912(d) because it is qualified by an "abandon[ment]" limitation. *Ibid.* Tellingly, the majority has nothing to say about § 1912(f), despite the fact that its interpretation of that provision is not limited in a similar way. In any event, this example by no means exhausts the class of semiprotected ICWA parents that the majority's opinion creates. It also includes, for example, biological fathers who have not yet established a relationship with their child because the child's mother never informed them of the pregnancy, see, *e.g., In re Termination of Parental Rights of Biological Parents of Baby Boy W.,* 1999 OK 74, 988 P.2d 1270, told them falsely that the pregnancy ended in miscarriage or termination, see, *e.g., A Child's Hope, LLC v. Doe,* 178 N.C.App. 96, 630 S.E.2d 673 (2006), or otherwise obstructed the father's involvement in the child's life, see, *e.g., In re Baby Girl W.,* 728 S.W.2d 545 (Mo.App.1987) (birth mother moved and did not inform father of her whereabouts); *In re Petition of Doe,* 159 Ill.2d 347, 202 Ill.Dec. 535, 638 N.E.2d 181 (1994) (father paid pregnancy expenses until birth mother cut off contact with him and told him that their child had died shortly after birth). And it includes biological fathers who did not contribute to pregnancy expenses because they were unable to do so, whether because the father lacked sufficient means, the expenses were covered by a third party, or the birth mother did not pass on the relevant bills. See, *e.g., In re Adoption of B. V.,* 2001 UT App 290, ¶¶ 24–31, 33 P.3d 1083, 1087–1088.

The majority expresses the concern that my reading of the statute would produce "far-reaching consequences," because "even a sperm donor" would be entitled to ICWA's protections. *Ante,* at 2563, n. 8. If there are any examples of women who go to the trouble and expense of artificial insemination and then carry the child to term, only to put the child up for adoption or be found so unfit as mothers that state

authorities attempt an involuntary adoptive placement —thereby necessitating termination of the parental rights of the sperm donor father—the majority does not cite them. As between a possibly overinclusive interpretation of the statute that covers this unlikely class of cases, and the majority's underinclusive interpretation that has the very real consequence of denying ICWA's protections to all noncustodial biological fathers, it is surely the majority's reading that is contrary to ICWA's design.

9 With a few exceptions not relevant here, before a final decree of adoption may be entered, one of two things must happen: "the biological parents must either voluntarily relinquish their parental rights or have their rights involuntarily terminated." 2 A. Haralambie, Handling Child Custody, Abuse and Adoption Cases § 14.1, pp. 764–765 (3d ed. 2009) (footnote omitted).

Not from the statute Congress drafted, according to the majority. The majority suggests that it might come from state law. See *ante,* at 2563, n. 8. But it is incongruous to suppose that Congress intended a patchwork of federal and state law to apply in termination of parental rights proceedings. Congress enacted a statute aimed at protecting the familial relationships between Indian parents and their children because it concluded that state authorities "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). It provided a "minimum Federal standar [d]," § 1902, for termination of parental rights that is more demanding than the showing of unfitness under a high "clear and convincing evidence" standard that is the norm in the States, see 1 J. Hollinger, Adoption Law and Practice § 2.10 (2012); *Santosky,* 455 U.S., at 767–768, 102 S.Ct. 1388.

While some States might provide protections comparable to § 1912(d)'s required remedial efforts and § 1912(f)'s heightened standard for termination of parental rights, many will provide less. There is no reason to believe Congress wished to leave protection of the parental rights of a subset of ICWA "parent[s]" dependent on the happenstance of where a particular "child custody proceeding" takes place. I would apply, as the statute construed in its totality commands, the standards Congress provided in §§ 1912(d) and (f) to the termination ***2580** of all ICWA "parent[s']" parent-child relationships.

II

The majority's textually strained and illogical reading of the statute might be explicable, if not justified, if there were reason to believe that it avoided anomalous results or furthered a clear congressional policy. But neither of these conditions is present here.

A

With respect to § 1912(d), the majority states that it would be "unusual" to apply a rehabilitation requirement where a natural parent has never had custody of his child. *Ante,* at 2563 – 2564. The majority does not support this bare assertion, and in fact state child welfare authorities can and do provide reunification services for biological fathers who have not previously had custody of their children.[10] And notwithstanding the South Carolina Supreme Court's imprecise interpretation of the provision, see 398 S.C., at 647–648, 731 S.E.2d, at 562, § 1912(d) does not require the prospective adoptive family to themselves undertake the mandated rehabilitative efforts. Rather, it requires the party seeking termination of parental rights to "satisfy the court that active efforts have been made" to provide appropriate remedial services.

10 See, *e.g.,* Cal. Welf. & Inst. Code Ann. § 361.5(a) (West Supp. 2013); *Francisco G. v. Superior Court,* 91 Cal.App.4th 586, 596, 110 Cal.Rptr.2d 679, 687 (2001) (stating that "the juvenile court 'may' order reunification services for a biological father if the court determines that the services will benefit the child"); *In re T.B.W.,* 312 Ga.App. 733, 734–735, 719 S.E.2d 589, 591 (2011) (describing reunification services provided to biological father beginning when "he had yet to establish his paternity" under state law, including efforts to facilitate visitation and involving father in family " 'team meetings' "); *In re Guardianship of DMH,* 161 N.J. 365, 391–394, 736 A.2d 1261, 1275–1276 (1999) (discussing what constitutes "reasonable efforts" to reunify a noncustodial biological father with his children in accordance with New Jersey statutory requirements); *In re Bernard T.,* 319 S.W.3d 586, 600 (Tenn.2010) (stating that "in appropriate circumstances, the Department [of Children's Services] must make reasonable efforts to reunite a child with his or her biological parents or legal parents or even with the child's putative biological father").

In other words, the prospective adoptive couple have to make an evidentiary showing, not undertake person-to-person remedial outreach. The services themselves might be attempted by the Indian child's Tribe, a state agency, or a private adoption agency. Such remedial efforts are a familiar requirement of child welfare law, including federal child welfare policy. See 42 U.S.C. § 671(a)(15)(B) (requiring States receiving federal funds for foster care and adoption assistance to make "reasonable efforts ... to preserve and reunify families" prior to foster care placement or removal of a child from its home).

There is nothing "bizarre," *ante,* at 2563 – 2564, about placing on the party seeking to terminate a father's parental rights the burden of showing that the step is necessary as well as justified. "For ... natural parents, ... the consequence of an erroneous termination [of parental rights] is the unnecessary destruction of their natural family." *Santosky,* 455 U.S., at 766, 102 S.Ct. 1388. In any event, the question is a nonissue in this case given the family court's finding that Birth Father is "a fit and proper person to have custody of his child" who "has demonstrated [his] ability to parent effectively" and who possesses "unwavering love for this child." App. to Pet. for Cert. 128a (Sealed). Petitioners cannot show that rehabilitative efforts have "proved unsuccessful," 25 U.S.C. § 1912(d), because Birth Father is not in need of rehabilitation. [11]

11 The majority's concerns about what might happen if no state or tribal authority stepped in to provide remedial services are therefore irrelevant here. *Ante,* at 2564, n. 9. But as a general matter, if a parent has rights that are an obstacle to an adoption, the state- and federal-law safeguards of those rights must be honored, irrespective of prospective adoptive parents' understandable and valid desire to see the adoption finalized. "We must remember that the purpose of an adoption is to provide a home for a child, not a child for a home." *In re Petition of Doe,* 159 Ill.2d, at 368, 202 Ill.Dec. 535, 638 N.E.2d, at 190 (Heiple, J., supplemental opinion supporting denial of rehearing).

***2581** B

On a more general level, the majority intimates that ICWA grants Birth Father an undeserved windfall: in the majority's words, an "ICWA trump card" he can "play ... at the eleventh hour to override the mother's decision and the child's best interests." *Ante,* at 2565. The implicit argument is that Congress could not possibly have intended to recognize a parent-child relationship between Birth Father and Baby Girl that would have to be legally terminated (either by valid consent or involuntary termination) before the adoption could proceed.

But this supposed anomaly is illusory. In fact, the law of at least 15 States did precisely that at the time ICWA was passed. [12] And the law of a number of States still does so. The State of Arizona, for example, requires that notice of an adoption petition be given to all "potential father[s]" and that they be informed of their "right to seek custody." Ariz.Rev.Stat. §§ 8–106(G)–(J) (West Supp.2012). In Washington, an "alleged father['s]" consent to adoption is required absent the termination of his parental rights, Wash. Rev.Code §§ 26.33.020(1), 26.33.160(1)(b) (2012); and those rights may be terminated only "upon a showing by clear, cogent, and convincing evidence" not only that termination is in the best interest of the child and that the father is withholding his consent to adoption contrary to child's best interests, but also that the father "has failed to perform parental duties under circumstances showing a substantial lack of regard for his parental obligations," § 26.33.120(2). [13]

12 See Ariz.Rev.Stat. Ann. § 8–106(A)(1)(c) (1974–1983 West Supp.) (consent of both natural parents necessary); Iowa Code §§ 600.3(2), 600A.2, 600A.8 (1977) (same); Ill. Comp. Stat., ch. 40, § 1510 (West 1977) (same); Nev.Rev.Stat. §§ 127.040, 127.090 (1971) (same); R.I. Gen. Laws §§ 15–7–5, 15–7–7 (Bobbs–Merrill 1970) (same); Conn. Gen.Stat. §§ 45–61d, 45–61i(b)(2) (1979) (natural father's consent required if paternity acknowledged or judicially established); Fla. Stat. § 63.062 (1979) (same); Ore.Rev.Stat. §§ 109.092, 109.312 (1975) (same); S.D. Codified Laws §§ 25–6–1.1, 25–6–4 (Allen Smith 1976) (natural father's consent required if mother identifies him or if paternity is judicially established); Ky.Rev.Stat. Ann. §§ 199.500, 199.607 (Bobbs–Merrill Supp. 1980) (same); Ala.Code § 26–10–3 (Michie 1977) (natural father's consent required when paternity judicially established); Minn.Stat. §§ 259.24(a), 259.26(3)(a), (e), (f), 259.261 (1978) (natural father's consent required when identified on birth certificate, paternity judicially established, or paternity asserted by affidavit); N.H.Rev.Stat. Ann. § 170–B:5(I)(d) (1977) (natural father's consent required if he files notice of intent to claim paternity within set time from notice of prospective adoption); Wash. Rev.Code §§ 26.32.040(5), 26.32.085 (1976) (natural father's consent required if paternity acknowledged,

judicially established, or he files notice of intent to claim paternity within set time from notice of prospective adoption); W. Va.Code Ann. § 48–4–1 (Michie Supp. 1979) (natural father's consent required if father admits paternity by any means). See also Del.Code Ann., Tit. 13, § 908(2) (Michie Supp. 1980) (natural father's consent required unless court finds that dispensing with consent requirement is in best interests of the child); Wyo. Stat. Ann. §§ 1–22–108, 1–22–109 (Michie 1988) (same).

13 See also, *e.g.,* Nev.Rev.Stat. §§ 127.040(1)(a), 128.150 (2011).

***2582** Without doubt, laws protecting biological fathers' parental rights can lead—even outside the context of ICWA—to outcomes that are painful and distressing for both would-be adoptive families, who lose a much wanted child, and children who must make a difficult transition. See, *e.g., In re Adoption of Tobias D.,* 2012 Me. 45, ¶ 27, 40 A.3d 990, 999 (recognizing that award of custody of 2 ½–year–old child to biological father under applicable state law once paternity is established will result in the "difficult and painful" necessity of "removing the child from the only home he has ever known"). On the other hand, these rules recognize that biological fathers have a valid interest in a relationship with their child. See *supra,* at 2574 – 2575. And children have a reciprocal interest in knowing their biological parents. See *Santosky,* 455 U.S., at 760–761, n. 11, 102 S.Ct. 1388 (describing the foreclosure of a newborn child's opportunity to "ever know his natural parents" as a "los[s] [that] cannot be measured"). These rules also reflect the understanding that the biological bond between a parent and a child is a strong foundation on which a stable and caring relationship may be built. Many jurisdictions apply a custodial preference for a fit natural parent over a party lacking this biological link. See, *e.g., Ex parte Terry,* 494 So.2d 628, 632 (Ala.1986); *Appeal of H. R.,* 581 A.2d 1141, 1177 (D.C.1990) (opinion of Ferren, J.); *Stuhr v. Stuhr,* 240 Neb. 239, 245, 481 N.W.2d 212, 216 (1992); *In re Michael B.,* 80 N.Y.2d 299, 309, 590 N.Y.S.2d 60, 604 N.E.2d 122, 127 (1992). Cf. *Smith v. Organization of Foster Families For Equality & Reform,* 431 U.S. 816, 845, 97 S.Ct. 2094, 53 L.Ed.2d 14 (1977) (distinguishing a natural parent's "liberty interest in family privacy," which has its source "in intrinsic human rights," with a foster parent's parallel interest in his or her relationship with a child, which has its "origins in an arrangement in which the State has been a partner from the outset"). This preference is founded in the "presumption that fit parents act in the best interests of their children." *Troxel v. Granville,* 530 U.S. 57, 68, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (plurality opinion). " '[H]istorically [the law] has recognized that natural bonds of affection [will] lead parents' " to promote their child's well-being. *Ibid.* (quoting *Parham v. J. R.,* 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979)).

Balancing the legitimate interests of unwed biological fathers against the need for stability in a child's family situation is difficult, to be sure, and States have, over the years, taken different approaches to the problem. Some States, like South Carolina, have opted to hew to the constitutional baseline established by this Court's precedents and do not require a biological father's consent to adoption unless he has provided financial support during pregnancy. See *Quilloin v. Walcott,* 434 U.S. 246, 254–256, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978); *Lehr,* 463 U.S., at 261, 103 S.Ct. 2985. Other States, however, have decided to give the rights of biological fathers more robust protection and to afford them consent rights on the basis of their biological link to the child. At the time that ICWA was passed, as noted, over one-fourth of States did so. See *supra,* at 2580 – 2581.

ICWA, on a straightforward reading of the statute, is consistent with the law of those States that protected, and protect, birth fathers' rights more vigorously. This reading can hardly be said to generate an anomaly. ICWA, as all acknowledge, was "the product of rising concern ***2583** ... [about] abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families." *Holyfield,* 490 U.S., at 32, 109 S.Ct. 1597. It stands to reason that the Act would not render the legal status of an Indian father's relationship with his biological child fragile, but would instead grant it a degree of protection commensurate with the more robust state-law standards. [14]

14 It bears emphasizing that the ICWA standard for termination of parental rights of which Birth Father claims the benefit is more protective than, but not out of step with, the clear and convincing standard generally applied in state courts when termination of parental rights is sought. Birth Father does not claim that he is entitled to custody of Baby Girl unless petitioners can satisfy the demanding standard of § 1912(f). See Brief for Respondent Birth Father 40, n. 15. The question of custody would be analyzed independently, as it was by the South Carolina Supreme Court. Of course, it will often be the case that custody is subsequently granted to a child's fit parent, consistent with the presumption that a natural parent will act in the best interests of his child. See *supra,* at 2581 – 2583.

C

The majority also protests that a contrary result to the one it reaches would interfere with the adoption of Indian children. *Ante,* at 2563 – 2564, 2564 – 2565. This claim is the most perplexing of all. A central purpose of ICWA is to "promote the stability and security of Indian ... families," 25 U.S.C. § 1902, in part by countering the trend of placing "an alarmingly high percentage of [Indian] children ... in non-Indian foster and adoptive homes and institutions." § 1901(4). The Act accomplishes this goal by, first, protecting the familial bonds of Indian parents and children, see *supra,* at 2573 – 2578; and, second, establishing placement preferences should an adoption take place, see § 1915(a). ICWA does not interfere with the adoption of Indian children except to the extent that it attempts to avert the necessity of adoptive placement and makes adoptions of Indian children by non-Indian families less likely.

The majority may consider this scheme unwise. But no principle of construction licenses a court to interpret a statute with a view to averting the very consequences Congress expressly stated it was trying to bring about. Instead, it is the " 'judicial duty to give faithful meaning to the language Congress adopted in the light of the evident legislative purpose in enacting the law in question.' " *Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson,* 559 U.S. 280, 298, 130 S.Ct. 1396, 176 L.Ed.2d 225 (2010) (quoting *United States v. Bornstein,* 423 U.S. 303, 310, 96 S.Ct. 523, 46 L.Ed.2d 514 (1976)).

The majority further claims that its reading is consistent with the "primary" purpose of the Act, which in the majority's view was to prevent the dissolution of "intact" Indian families. *Ante,* at 2560 – 2562. We may not, however, give effect only to congressional goals we designate "primary" while casting aside others classed as "secondary"; we must apply the entire statute Congress has written. While there are indications that central among Congress' concerns in enacting ICWA was the removal of Indian children from homes in which Indian parents or other guardians had custody of them, see, *e.g.,* §§ 1901(4), 1902, Congress also recognized that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children," § 1901(3). As we observed in *Holyfield,* ICWA protects not only Indian parents' interests but also those of Indian tribes. See 490 U.S., at 34, 52, 109 S.Ct. 1597. A tribe's interest in its next generation of citizens is adversely ***2584** affected by the placement of Indian children in homes with no connection to the tribe, whether or not those children were initially in the custody of an Indian parent. [15]

15 Birth Father is a registered member of the Cherokee Nation, a fact of which Birth Mother was aware at the time of her pregnancy and of which she informed her attorney. See 398 S.C. 625, 632–633, 731 S.E.2d 550, 554 (2012).

Moreover, the majority's focus on "intact" families, *ante,* at 2561 – 2562, begs the question of what Congress set out to accomplish with ICWA. In an ideal world, perhaps all parents would be perfect. They would live up to their parental responsibilities by providing the fullest possible financial and emotional support to their children. They would never suffer mental health problems, lose their jobs, struggle with substance dependency, or encounter any of the other multitudinous personal crises that can make it difficult to meet these responsibilities. In an ideal world parents would never become estranged and leave their children caught in the middle. But we do not live in such a world. Even happy families do not always fit the custodial-parent mold for which the majority would reserve ICWA's substantive protections; unhappy families all too often do not. They are families nonetheless. Congress understood as much. ICWA's definitions of "parent" and "termination of parental rights" provided in § 1903 sweep broadly. They should be honored.

D

The majority does not rely on the theory pressed by petitioners and the guardian ad litem that the canon of constitutional avoidance compels the conclusion that ICWA is inapplicable here. See Brief for Petitioners 43–51; Brief for Respondent Guardian Ad Litem 48–58. It states instead that it finds the statute clear. [16] *Ante,* at 2565. But the majority nevertheless offers the suggestion that a contrary result would create an equal protection problem. *Ibid.* Cf. Brief for Petitioners 44–47; Brief for Respondent Guardian Ad Litem 53–55.

16 Justice THOMAS concurs in the majority's interpretation because, although he finds the statute susceptible of more than one plausible reading, he believes that the majority's reading avoids "significant constitutional problems" concerning whether ICWA exceeds Congress' authority under the Indian Commerce Clause. *Ante,* at 2565, 2566 – 2571. No party advanced this argument, and it is inconsistent with this Court's precedents holding

> that Congress has "broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as plenary and exclusive," founded not only on the Indian Commerce Clause but also the Treaty Clause. *United States v. Lara,* 541 U.S. 193, 200–201, 124 S.Ct. 1628, 158 L.Ed.2d 420 (2004) (internal quotation marks omitted).

It is difficult to make sense of this suggestion in light of our precedents, which squarely hold that classifications based on Indian tribal membership are not impermissible racial classifications. See *United States v. Antelope,* 430 U.S. 641, 645–647, 97 S.Ct. 1395, 51 L.Ed.2d 701 (1977); *Morton v. Mancari,* 417 U.S. 535, 553–554, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974). The majority's repeated, analytically unnecessary references to the fact that Baby Girl is 3/256 Cherokee by ancestry do nothing to elucidate its intimation that the statute may violate the Equal Protection Clause as applied here. See *ante,* at 2556 – 2557, 2559; see also *ante,* at 2565 (stating that ICWA "would put certain vulnerable children at a great disadvantage solely because an ancestor—*even a remote one*—was an Indian" (emphasis added)). I see no ground for this Court to second-guess the membership requirements of federally ***2585** recognized Indian tribes, which are independent political entities. See *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 72, n. 32, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978). I am particularly averse to doing so when the Federal Government requires Indian tribes, as a prerequisite for official recognition, to make "descen[t] from a historical Indian tribe" a condition of membership. 25 CFR § 83.7(e) (2012).

The majority's treatment of this issue, in the end, does no more than create a lingering mood of disapprobation of the criteria for membership adopted by the Cherokee Nation that, in turn, make Baby Girl an "Indian child" under the statute. Its hints at lurking constitutional problems are, by its own account, irrelevant to its statutory analysis, and accordingly need not detain us any longer.

III

Because I would affirm the South Carolina Supreme Court on the ground that § 1912 bars the termination of Birth Father's parental rights, I would not reach the question of the applicability of the adoptive placement preferences of § 1915. I note, however, that the majority does not and cannot foreclose the possibility that on remand, Baby Girl's paternal grandparents or other members of the Cherokee Nation may formally petition for adoption of Baby Girl. If these parties do so, and if on remand Birth Father's parental rights are terminated so that an adoption becomes possible, they will then be entitled to consideration under the order of preference established in § 1915. The majority cannot rule prospectively that § 1915 would not apply to an adoption petition that has not yet been filed. Indeed, the statute applies "[i]n *any* adoptive placement of an Indian child under State law," 25 U.S.C. § 1915(a) (emphasis added), and contains no temporal qualifications. It would indeed be an odd result for this Court, in the name of the child's best interests, cf. *ante,* at 2564, to purport to exclude from the proceedings possible custodians for Baby Girl, such as her paternal grandparents, who may have well-established relationships with her.

* * *

The majority opinion turns § 1912 upside down, reading it from bottom to top in order to reach a conclusion that is manifestly contrary to Congress' express purpose in enacting ICWA: preserving the familial bonds between Indian parents and their children and, more broadly, Indian tribes' relationships with the future citizens who are "vital to [their] continued existence and integrity." § 1901(3).

The majority casts Birth Father as responsible for the painful circumstances in this case, suggesting that he intervened "at the eleventh hour to override the mother's decision and the child's best interests," *ante,* at 2565. I have no wish to minimize the trauma of removing a 27–month–old child from her adoptive family. It bears remembering, however, that Birth Father took action to assert his parental rights when Baby Girl was four months old, as soon as he learned of the impending adoption. As the South Carolina Supreme Court recognized, " '[h]ad the mandate of ... ICWA been followed [in 2010], ... much potential anguish might have been avoided[;] and in any case the law cannot be applied so as automatically to "reward those who obtain custody, whether lawfully or otherwise, and maintain it during any ensuing (and protracted) litigation." ' " 398 S.C., at 652, 731 S.E.2d, at 564 (quoting *Holyfield,* 490 U.S., at 53–54, 109 S.Ct. 1597).

The majority's hollow literalism distorts the statute and ignores Congress' purpose in order to rectify a perceived wrong that, while heartbreaking at the time, was a ***2586** correct application of federal law and that in any case cannot be undone. Baby Girl has now resided with her father for 18 months. However difficult it must have been for her to leave

Adoptive Couple's home when she was just over 2 years old, it will be equally devastating now if, at the age of 3 ½, she is again removed from her home and sent to live halfway across the country. Such a fate is not foreordained, of course. But it can be said with certainty that the anguish this case has caused will only be compounded by today's decision.

I believe that the South Carolina Supreme Court's judgment was correct, and I would affirm it. I respectfully dissent.

All Citations

133 S.Ct. 2552, 186 L.Ed.2d 729, 81 USLW 4590, 13 Cal. Daily Op. Serv. 6589, 2013 Daily Journal D.A.R. 8235, 24 Fla. L. Weekly Fed. S 422

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334 P.3d 165
Supreme Court of Alaska.

NATIVE VILLAGE OF TUNUNAK, Appellant,
v.
STATE of Alaska, DEPARTMENT OF HEALTH & SOCIAL SERVICES, OFFICE OF CHILDREN'S SERVICES, and H.S. and K.S., Appellees.

No. S–14670.
|
Sept. 12, 2014.
|
Rehearing Denied June 10, 2015.

Synopsis

Background: After Indian child was found to be child in need of aid (CINA) and parents' parental rights were terminated, Indian tribe sought to enforce Indian Child Welfare Act's (ICWA) placement preferences, and child's non-Indian foster parents petitioned for adoption. The Superior Court, Third Judicial District, Anchorage, Frank A. Pfiffner, J., granted foster parents' adoption petition. Tribe appealed.

Holdings: The Supreme Court, Stowers, J., held that:

[1] ICWA's preferences did not apply, and

[2] tribe's disclosure of grandmother's contact information did not amount to formal adoption request.

Affirmed.

Order, 303 P.3d 431, vacated.

Winfree, J., filed dissenting opinion.

Attorneys and Law Firms

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Before: FABE, Chief Justice, WINFREE, STOWERS, MAASSEN, and BOLGER, Justices.

STOWERS, Justice.

I. INTRODUCTION

This is the second appeal in a case that began in July 2008 when the Alaska Office of Children's Services (OCS) assumed custody of four-month-old Dawn[1] from her parents.[2] Dawn was found to be a child in need of aid (CINA).[3] Dawn's parents were Alaska Natives and thus the protections and requirements of the Indian Child Welfare Act (ICWA)[4] applied to the CINA case.[5] One of ICWA's provisions establishes preferences for foster care and adoptive placement of an Indian child with a member of the child's extended family, with other members of the child's tribe, or with other Indian families.[6] Native Village of Tununak (the Tribe) intervened in Dawn's CINA case and submitted a list of potential placement options for Dawn, including Dawn's maternal grandmother, Elise, who lives in the village.[7] Throughout much of the case, the parents and Tribe agreed there was good cause not to place Dawn with an ICWA preferred placement, and Dawn was eventually placed with the Smiths, non-Native foster parents who live in Anchorage.[8]

1 We use pseudonyms to protect the privacy of the parties involved.

2 *Native Vill. of Tununak v. State, Dep't of Health & Social Servs., Office of Children's Servs.*, 303 P.3d 431, 433 (Alaska 2013) (*Tununak I*).

3 *Id.*

4 25 U.S.C. §§ 1901–1963 (2012).

5 *Tununak I*, 303 P.3d at 433.

6 25 U.S.C. § 1915(a).

7 *Tununak I,* 303 P.3d at 433.

8 *Id.* at 434–35.

The superior court terminated Dawn's parents' parental rights at a September 2011 trial, making Dawn eligible for adoption.[9] The Tribe asserted that, given the termination of parental rights, there was no longer good cause to deviate from ICWA's placement preferences and objected to Dawn's continued placement in Anchorage.[10] In November the Smiths filed a petition to adopt Dawn.[11] At no point in the case did Elise file an adoption petition in the superior court.

9 *Id.* at 435.

10 *Id.*

11 *Id.*

The superior court conducted a placement hearing following the Tribe's objection to placement with the Smiths.[12] Following testimony by a number of witnesses, including Elise,[13] the court found that there was continued good cause to deviate from ICWA's adoptive placement preferences and again approved Dawn's placement with the Smiths.[14] The court then granted the Smiths' adoption petition in March 2012.[15] Dawn was almost four years old, and had ***167** lived with the Smiths for almost two and a half years.[16]

12 *Id.* at 435–39.

13 *Id.* at 437–38.

14 *Id.* at 439–40.

15 *Id.* at 440.

16 *Id.* at 434, 440.

In separate appeals, the Tribe appealed both the superior court's order finding that there was good cause to deviate from ICWA's placement preferences and the adoption order.[17] We issued an order staying the adoption appeal while we considered the adoptive placement appeal.[18]

17 *Id.* at 440 n. 10.

18 *Id.; see also Native Vill. of Tununak v. State, OCS, et al.,* No. S–14670 (Alaska Supreme Court Order, Nov. 29, 2012) (staying sua sponte the adoption appeal pending the resolution of the adoption placement appeal).

On June 21, 2013, we issued our decision in the first appeal that examined Dawn's adoptive placement with the Smiths.[19] We reversed the superior court's finding of good cause to deviate from ICWA's placement preferences.[20] Though we had held in previous cases that the preponderance of the evidence standard was the correct standard of proof, we were convinced by the Tribe's argument that the preponderance standard was inconsistent with Congress's intent in enacting ICWA, and that a higher standard of proof—proof by clear and convincing evidence—was required.[21] We overruled our prior cases and remanded the adoptive placement case to the superior court for it to take additional evidence and make its determination whether there was clear and convincing evidence of good cause to deviate from ICWA's adoptive placement preferences.[22] We continued our stay order of the adoption appeal.[23]

19 *Tununak I,* 303 P.3d at 431.

20 *Id.* at 453.

21 *Id.* at 446–49.

22 *Id.* at 453.

23 *Native Vill. of Tununak v. State, OCS, et al.,* No. S–14670 (Alaska Supreme Court Order, Nov. 29, 2012); *Native Vill. of Tununak v. State, OCS, et al.,* No. S–14670 (Alaska Supreme Court Order, June 21, 2013) (ordering briefing on whether the stay of the adoption appeal should continue following the court's issuance of its opinion in the adoption placement appeal).

Four days after we issued our opinion in the adoptive placement appeal (*Tununak I*), the United States Supreme Court issued its opinion in *Adoptive Couple v. Baby Girl* (*Baby Girl*).[24] There, the Supreme Court held that ICWA "§ 1915(a)'s [placement] preferences are inapplicable in cases where no alternative party has formally sought to adopt the child. This is because there simply is no 'preference' to apply if no alternative party that is eligible to be preferred under § 1915(a) has come forward."[25]

24 ––– U.S. ––––, 133 S.Ct. 2552, 186 L.Ed.2d 729 (2013).

25 *Id.* at 2564. The dissent argues that this portion of the opinion was dicta. We disagree. While "statements of a legal rule set forth in a judicial opinion do not always divide neatly into 'holdings' and 'dicta,' " *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1,* 551 U.S. 701, 831, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007)

(Breyer, J., dissenting), in this case, the Court's *Baby Girl* opinion is divided into distinct sections considering three discrete subdivisions of ICWA: §§ 1912(f), 1912(d), and 1915(a). *See Baby Girl,* 133 S.Ct. at 2557. The Court's discussion of § 1915(a) is succinct and its holding unequivocal, *id.* at 2564–65, and we apply it to the facts of the present appeal.

We asked the parties to provide supplemental briefing and oral argument on the effect of the Supreme Court's *Baby Girl* decision on the adoption appeal currently before us.[26] We now hold that because the United States Supreme Court's decisions on issues of federal law bind state courts' consideration of federal law issues—including the Indian Child Welfare Act—the decision in *Baby Girl* applies directly to the adoptive placement case on remand and to this adoption appeal. We discern no material factual differences between the *Baby Girl* case and this case, so we are unable to distinguish the holding in *Baby Girl.* Because the Supreme Court's holding in *Baby Girl* is clear and not qualified in any material way, and because it is undisputed that Elise did not "formally [seek] to adopt" Dawn in the superior court, ***168** we conclude that, as in *Baby Girl,* "there simply is no 'preference' to apply [,] [as] no alternative party that is eligible to be preferred under § 1915(a) has come forward[,]" and therefore ICWA "§ 1915(a)'s [placement] preferences are inapplicable."[27] We affirm the superior court's order granting the Smiths' petition to adopt Dawn and vacate our remand order in *Tununak I* requiring the superior court to conduct further adoptive placement proceedings. We do not otherwise disturb our decision in *Tununak I.*

26 *Native Vill. of Tununak v. State, OCS, et al.,* No. S–14670 (Alaska Supreme Court Order, Oct. 7, 2013) (ordering briefing and oral argument on the effect of *Baby Girl* on the adoption case).

27 *Baby Girl,* 133 S.Ct. at 2564.

II. FACTS AND PROCEEDINGS

A. Facts

Dawn F. was born in Anchorage in March 2008.[28] When she was four months old OCS assumed emergency custody and placed her in foster care in Anchorage.[29] The Tribe formally intervened in Dawn's CINA case in August 2008 and submitted a list of potential foster placement options under Alaska Child in Need of Aid Rule 8(c)(7)[30] for Dawn, including placement with her maternal grandmother, Elise F., who lived in Tununak.[31] Elise discussed foster placement at meetings with OCS in July and September 2008, but OCS ruled her out as a potential placement because an adult son living with her at the time had a barrier-crime for placement purposes.[32] OCS placed Dawn in a non-Native foster home to facilitate visitation with her mother, Jenn F., who lived in Anchorage.[33] In November 2008 the parties stipulated that there was good cause to deviate from ICWA's placement preferences, and in March 2009 the superior court found there was good cause to continue the deviation, as Jenn was progressing with her OCS case plan and it appeared she might be reunited with Dawn.[34] In August 2009 Elise contacted OCS to report that her son had moved out; she confirmed that she still sought foster placement.[35]

28 *Tununak I,* 303 P.3d at 433.

29 *Id.*

30 That rule states:

> Except to the extent otherwise directed by order or rule, [a tribe that has intervened in the proceedings] shall, without awaiting a discovery request, provide to other parties the following information, excluding any privileged material:....
> ... names and contact information for extended family of the child, a list of potential placements under ... § 1915, and a summary of any tribal services or tribal court actions involving the family. Unless otherwise directed by the court, these disclosures shall be made within 45 days of the date of service of the petition for adjudication, or for tribes, the date of the order granting intervention. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

31 *Tununak I,* 303 P.3d at 433.

32 *Id.* at 433–34.

33 *Id.* at 434.

34 *Id.*

35 *Id.*

In October 2009 OCS placed Dawn with non-Native foster parents Kim and Harry Smith in Anchorage, and in December 2009 Elise visited Dawn.[36] Following this meeting, Elise

did not call, write, or communicate with Dawn.[37] Also in December 2009 a representative from the Association of Village Council Presidents visited Elise's home in Tununak on OCS's behalf and noted potential hazards in the home that needed to be addressed before placement could occur.[38] These included unsecured guns, cleaning supplies, medicine, and general clutter in the area that Elise planned to use as Dawn's bedroom.[39] In February 2010 Elise assured OCS she would remedy these issues, and OCS asked Elise to arrange for a second home visit once she made the proposed changes.[40]

36 *Id.*

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.*

***169** In May 2010 Elise attended a visit with Jenn and Dawn and told an OCS social worker that she thought Jenn would complete substance abuse treatment; Elise did not seek foster placement at that time and had not remedied the issues in her home.[41] OCS filed two petitions to terminate Jenn's parental rights: the first was denied in November 2010, and a second was filed in April 2011.[42] At a status conference in February 2011 Elise was present telephonically, and she questioned the court about whether Dawn would be returned to Jenn.[43] The court advised her in no uncertain terms that it was not safe for Dawn to return to Jenn's household given Jenn's continuing mental health issues and illegal drug use.[44] The superior court ultimately terminated Jenn's parental rights in September 2011.[45] Following termination the Tribe argued there was no longer good cause to deviate from ICWA's placement preferences, and a placement hearing was scheduled.[46]

41 *Id.*

42 *Id.* at 434–35.

43 *Id.* at 435.

44 *Id.*

45 *Id.*

46 *Id.*

The Smiths filed an adoption petition on November 3, 2011, and the petition was stayed pending the resolution of the ICWA placement hearing on November 14, 2011.[47]

47 *Id.*

B. Proceedings

1. The placement hearing and appeal

The superior court noted at the outset of the placement hearing that it would not consolidate the CINA placement case with the adoption case, but cautioned the Tribe that it would not get "two bites at the apple"; in other words, "if the Tribe los[t], it [would]n't get to contest placement in the adoption proceeding."[48] We explained in *Tununak I* that "[w]hen the court declined to consolidate the two cases, it stated that the future adoption proceeding would be dependent on the placement ruling in the CINA case"[49] and that "denying the Tribe's objections to adoptive placement [effectively] ... clear[ed] the way for the Smiths to adopt Dawn."[50]

48 *Id.* at 443.

49 *Id.*

50 *Id.* at 444.

Elise testified at the hearing.[51] She had previously been an ICWA social worker and was aware of her ICWA rights.[52] When asked if she wanted to take care of Dawn just because the Tribe wanted her to she answered with an equivocal "[y]es and no."[53] She clarified: "[I]t is my right to adopt or take my granddaughter and ... raise her as an Alaska Native ... because she is part of my flesh and blood and so that she [can] learn her values in Native culture and traditions and where she came from."[54] Elise also said that she had not been able to see Dawn very often due to the expense of travel; she did not call or write letters to Dawn because the child was too young to read or communicate; she knew Dawn did not know her at that point; and she understood Dawn would have to be gradually introduced to life in the village to prevent culture shock.[55] Elise testified that she wanted Dawn to be placed with her "from the beginning" and she recognized that "if [Dawn] had moved [in] with me when [Dawn] was [a] young infant, then it could have been easier because [Dawn] would

have known [her] grandmother [,]" but at this point Dawn had been "raised by [Kim and Harry Smith]." Elise also indicated at this hearing that she had filed a petition to adopt Dawn, but the record contains no evidence that such a petition was ever filed, and no party has argued to the contrary. [56]

51 *Id.* at 437–38.

52 *Id.*

53 *Id.* at 438.

54 *Id.* (internal quotation marks omitted).

55 *Id.*

56 In its briefing to us the Tribe conceded that no court petition was filed.

***170** In its decision on placement the superior court noted that Elise was 67 years old and would be 82 when Dawn turned 18. [57] The court found Elise's testimony on the question of whether she wanted to adopt Dawn "less than convincing" and pointed out that she had maintained almost no contact with Dawn and knew nothing of Dawn's life in Anchorage. [58] The court also found that Elise testified that she wanted to adopt Dawn because the Tribe wanted her to. [59] The court found that the Smiths had been "exceptional foster parents" to Dawn. [60] Ultimately, the court determined there was good cause to deviate from ICWA's placement preferences by a preponderance of the evidence in accordance with Alaska Adoption Rule 11(f). [61] The Tribe moved to stay the Smiths' adoption proceeding pending the Tribe's appeal of the placement ruling to our court, but this motion was denied. [62]

57 *Id.* at 439.

58 *Id.*

59 *Id.*

60 *Id.*

61 *Id.* at 439–40.

62 *Id.* at 440.

2. The adoption hearing and appeal

On March 6, 2012, the superior court held an adoption hearing and granted the Smiths' adoption petition. [63] At that hearing the court noted that, since the placement hearing, "[n]o individual has come forward" and "[n]o names have been put forward of somebody who would be ICWA compliant under 1915(a) and the [Smiths] have been there for Dawn for ... these several years and the child's almost four." The court concluded it was in Dawn's best interest to be adopted that day by the Smiths, but cautioned that "the adoption [could] be reversed ... anything could happen including removal of the child" from the Smiths' care. Elise did not appear at the adoption hearing.

63 *Id.*

The Tribe appealed the adoption to our court. On November 29, 2012, we issued an order sua sponte staying the adoption appeal pending our decision in the related adoption placement appeal. [64]

64 *Native Vill. of Tununak v. State, OCS, et al.*, No. S–14670 (Alaska Supreme Court Order, Nov. 29, 2012).

3. Our decision in the placement appeal in *Tununak I* and the United States Supreme Court's decision in *Baby Girl*

We issued our decision in the placement appeal on June 21, 2013. [65] In that opinion we reversed and remanded the superior court's adoptive placement decision. [66] We concluded that ICWA requires a heightened clear and convincing evidence standard of proof be applied to the § 1915(a) good cause determination. [67] Because the superior court's placement decision was decided under a preponderance of the evidence standard, we remanded for the superior court to undertake a new good cause determination, consistent with a clear and convincing evidence standard, to decide whether deviation from the preferred placement preferences provided in ICWA § 1915(a) was appropriate. [68] We issued an order along with our decision in *Tununak I* that requested the parties to brief their positions on whether our stay of Dawn's adoption appeal should continue pending the superior court's proceedings on remand following *Tununak I*. [69]

65 *Tununak I*, 303 P.3d at 431.

66 *Id.* at 453.

67 *Id.*

68 *Id.* at 452–53.

69 *Native Vill. of Tununak v. State, OCS, et al.*, No. S–14670 (Alaska Supreme Court Order, June 21, 2013).

The United States Supreme Court issued its decision in *Adoptive Couple v. Baby Girl* four days later; the Court held that ICWA "§ 1915(a)'s preferences are inapplicable in cases where no alternative party has formally sought to adopt the child. This is because there simply is no 'preference' to apply if no ***171** alternative party that is eligible to be preferred under § 1915(a) has come forward." [70]

70 *Baby Girl*, 133 S.Ct. 2552, 2564 (2013).

In *Baby Girl*, the child's biological father (Biological Father) and biological mother (Birth Mother) broke off their engagement after Birth Mother became pregnant but would not accommodate Biological Father's request to move up the wedding. [71] Biological Father had no meaningful contact with Birth Mother following the couple's separation and sent her a text message indicating that he wished to relinquish his parental rights. [72] Birth Mother decided to give the child up for adoption and selected a non-Native adoptive couple (Adoptive Couple) through a private adoption agency. [73]

71 *Id.* at 2558.

72 *Id.*

73 *Id.*

Approximately four months after Baby Girl's birth, Adoptive Couple served Biological Father with notice of their pending adoption petition. [74] Biological Father signed the paperwork, stating he was not contesting the adoption. [75] He later testified that he assumed he was relinquishing parental rights to Birth Mother. [76] Biological Father contacted a lawyer a day after signing the papers and subsequently requested a stay of the adoption proceedings. [77] In those proceedings he sought custody of Baby Girl, took a paternity test, and participated in a four-day trial after which the South Carolina Family Court ultimately awarded him custody and denied Adoptive Couple's adoption petition. [78]

74 *Id.*

75 *Id.*

76 *Id.*

77 *Id.* at 2558–59.

78 *Id.* at 2559; *Adoptive Couple v. Baby Girl*, 398 S.C. 625, 731 S.E.2d 550, 555–56 (2012) (*Adoptive Couple*) (indicating that the trial took place from September 12–15, 2011, when Baby Girl was roughly two years old), *reh'g denied*, (Aug. 22, 2012), *cert. granted*, —— U.S. ——, 133 S.Ct. 831, 184 L.Ed.2d 646 (2013), and *rev'd*, —— U.S. ——, 133 S.Ct. 2552, 186 L.Ed.2d 729 (2013).

That decision was appealed to the South Carolina Supreme Court, and Biological Father participated in that appeal. [79] The South Carolina Supreme Court characterized his appeal as a "legal campaign to obtain custody" and affirmed the family court order. [80] The decision was appealed to the United States Supreme Court, and Biological Father again participated in that appeal. [81] At no point did Biological Father file a petition to adopt Baby Girl. [82]

79 *Adoptive Couple*, 731 S.E.2d at 552.

80 *Id.* at 552, 561.

81 *Baby Girl*, 133 S.Ct. at 2556.

82 *Id.* at 2564.

The United States Supreme Court ultimately reversed the South Carolina Supreme Court, holding in part that ICWA "§ 1915(a)'s preferences are inapplicable in cases where no alternative party has formally sought to adopt the child." [83] The Court reasoned: "This is because there simply is no 'preference' to apply if no alternative party that is eligible to be preferred under § 1915(a) has come forward." [84]

83 *Id.*

84 *Id.*

Because the Supreme Court's interpretation of ICWA § 1915(a) in *Baby Girl* called into doubt the application of § 1915(a)'s placement preferences on remand in *Tununak I*—as no one but the Smiths sought to formally adopt Dawn—we issued an order directing the parties to brief the effect of *Baby Girl* on the present adoption appeal and granted oral argument in the matter. [85]

85 *Native Vill. of Tununak v. State, OCS, et al.*, No. S–14670 (Alaska Supreme Court Order, Oct. 7, 2013).

III. STANDARD OF REVIEW

[1] [2] "[T]he [United States] Supreme Court's decisions on issues of federal law, including issues arising under the Federal Constitution, bind the state courts' consideration *172 of those issues,"[86] and we review those issues de novo.[87] Pure questions of law, including issues of statutory interpretation, invoke our "duty to 'adopt the rule of law that is most persuasive in light of precedent, reason, and policy' "[88] using our independent judgment.[89]

86 *Doe v. State, Dep't of Pub. Safety*, 92 P.3d 398, 404 (Alaska 2004).

87 *State, Dep't of Health & Soc. Servs., Office of Children's Servs. v. Doherty*, 167 P.3d 64, 68–70 (Alaska 2007) (applying de novo review to § 1983 claims as a matter of federal law).

88 *West v. Buchanan*, 981 P.2d 1065, 1066 (Alaska 1999) (quoting *Guin v. Ha*, 591 P.2d 1281, 1284 n. 6 (Alaska 1979)).

89 *Doe*, 92 P.3d at 402.

IV. DISCUSSION

All parties agree that we must decide the Tribe's challenge on appeal to the Smiths' adoption of Dawn in light of the Supreme Court's decision in *Baby Girl*. The State contends that "[b]ecause no one other than the Smiths formally sought to adopt Dawn, her adoption should be upheld under the controlling [*Baby Girl*] decision." The Smiths agree. The Tribe urges us to vacate the superior court's adoption decree and remand this matter for an adoptive placement determination based on our decision in *Tununak I* that required the superior court to find, under a clear and convincing evidence standard, whether there is good cause to deviate from ICWA § 1915(a)'s placement preferences. The Tribe takes the position that: (1) *Baby Girl* is factually distinguishable and inapplicable to state-driven child protection cases; (2) to the extent *Baby Girl* does apply, it merely requires that a specific family be formally identified as desiring placement of the Native child and Elise satisfied that requirement in this case; and (3) the requirement is satisfied in Alaska as soon as a tribe intervenes in the case and makes formal CINA Rule 8(c)(7) disclosures.

Finally, the Tribe contends that, if we interpret *Baby Girl* to mean that ICWA's placement preferences are inapplicable until an alternative adoptive family files a competing adoption petition, this decision will have disastrous results for rural Alaska, placing the largest burden on Native families with the fewest legal and financial resources, and create a dangerous disincentive for OCS, as the agency will place Native children in the first available home, thereby neutering the protections that ICWA originally sought to provide to promote the preservation of the Indian family.

The Tribe's interpretation of *Baby Girl*, as echoed by the dissent, strains the plain wording of a clear, unequivocal, and unqualified decision on a matter of federal law as interpreted by the United States Supreme Court. For the reasons that follow, we conclude that we are required to apply the Supreme Court's bright-line interpretation of ICWA § 1915(a)'s placement preferences to bar from consideration as an adoptive placement an individual who has taken no formal step to adopt the child.

A. ICWA § 1915(a) and *Baby Girl* Do Not Distinguish A State–Initiated Child Custody Proceeding From A Voluntary Private Adoption.

ICWA § 1915(a)'s placement preferences apply to "*any* adoptive placement of an Indian child under State law,"[90] and ICWA defines adoptive placements broadly as "the permanent placement of an Indian child for adoption, including *any action* resulting in a final decree of adoption."[91] The federal statute does not distinguish between state-initiated child protection cases and voluntary adoptions. The Supreme Court in *Baby Girl* also did not carve out such a distinction. In *Baby Girl*, the Supreme Court held without qualification that § 1915(a), "which provides placement preferences for the adoption of Indian children, does not bar a non-Indian family like Adoptive Couple from adopting an Indian child when no other eligible candidates have sought to adopt the child."[92] The Court emphasized that the "scope" of *173 § 1915(a) has a "critical limitation," namely, that " § 1915(a)'s preferences are inapplicable in cases where no alternative party has formally sought to adopt the child."[93] The Court reiterated, "This is because there simply is no 'preference' to apply if no alternative party that is eligible to be preferred under § 1915(a) has come forward."[94] To make its rationale perfectly clear, the Court again explained that, because Adoptive Couple was the only family that "sought to adopt Baby Girl," § 1915(a)'s

"rebuttable adoption preferences [did not] apply [because] no alternative party ... formally sought to adopt the child."[95] As a policy matter, the Court broadly concluded that while ICWA "was enacted to help preserve the cultural identity and heritage of Indian tribes," to require a placement preference determination for a party who did not seek to adopt "would put certain vulnerable children at a great disadvantage solely because an ancestor—even a remote one—was an Indian."[96] The Court cautioned that such a result may cause "prospective adoptive parents [to] ... pause before adopting any child who might possibly qualify as an Indian under the ICWA."[97]

90 25 U.S.C. § 1915(a) (emphasis added).

91 25 U.S.C. § 1903(*l*)(iv) (emphasis added).

92 *Baby Girl,* 133 S.Ct. 2552, 2557 (2013).

93 *Id.* at 2564.

94 *Id.*

95 *Id.* at 2565.

96 *Id.*

97 *Id.*

The dissent characterizes these statements by the United States Supreme Court interpreting § 1915(a) as dicta addressing the South Carolina Supreme Court's suggestion that if it had terminated Biological Father's rights, § 1915(a)'s preferences would have applied. But *Baby Girl* explained, clarified, and decided that § 1915(a) did *not* apply where no alternative party sought to adopt the Indian child, as was the case of Biological Father. When discussing the distinction between a holding and dictum, the Supreme Court has directed that "[w]hen an opinion issues for the Court, it is not only the result[,] but also those portions of the opinion necessary to that result by which we are bound."[98] We are likewise bound by the Supreme Court's holding concerning § 1915(a); it was necessary to the Supreme Court's reversal of the judgment of the South Carolina Supreme Court and its remand of the case for further proceedings.[99] In those ***174** further proceedings, it was clear to the South Carolina Supreme Court that § 1915(a)'s rebuttable adoption preferences did not apply to Biological Father, and the South Carolina court did not apply them. As the South Carolina Supreme Court stated on remand:

98 *Seminole Tribe of Fla. v. Florida,* 517 U.S. 44, 67, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996).

99 *See Baby Girl,* 133 S.Ct. at 2564–65. The dissent points out that *Baby Girl* did not consistently use the word "hold" in its summary of the three central holdings in the case; instead, the Court stated:

> [W]e *hold* that 25 U.S.C. § 1912(f) ... does not apply when, as here, the relevant parent never had custody of the child. We further *hold* that § 1912(d) ... is inapplicable when, as here, the parent abandoned the Indian child before birth and never had custody of the child. Finally, we *clarify* that § 1915(a) ... does not bar a non-Indian family like Adoptive Couple from adopting an Indian child when no other eligible candidates have sought to adopt the child. We accordingly reverse the South Carolina Supreme Court's judgment and remand for further proceedings.

Id. at 2557 (emphasis added). Contrary to the dissent's argument, we do not agree that the Court's use of the word "clarify" as opposed to "hold" when addressing § 1915(a) "leaves room for states to determine under their own adoption procedures when an eligible candidate has come forward such that the preferences should be applied." Our cases often use the word "clarify" to signal a holding. For example, in *Bruce L. v. W.E.,* 247 P.3d 966, 976 (Alaska 2011), we stated:

> At first blush *A.B.M.* [*v. M.H.,* 651 P.2d 1170 (Alaska 1982)] seems to mandate a reversal of the trial court's determination that Timothy is not an Indian child because the Eberts' concessions to the contrary throughout the proceedings should constitute judicial admissions. But given our subsequent case law defining the limitation of judicial admissions to purely factual matters and our discussion here regarding the nature of membership or eligibility for membership in a tribe, we *clarify* that the holding of *A.B.M.* is limited to precluding the adoptive parents from arguing a new position on appeal contrary to a position they had taken in the superior court on an issue not raised to or decided by that court.

(emphasis added) (footnote omitted). *See also Griswold v. City of Homer,* 252 P.3d 1020, 1027 (Alaska 2011) ("We therefore *clarify* that where the superior court acts as an intermediate appellate court ... its opinion or decision on appeal is the 'judgment' to which [the applicable appellate rule] refers." (emphasis added)); *Husseini v. Husseini,* 230 P.3d 682, 688 (Alaska 2010) ("We take this opportunity to elaborate on our holding in [a prior case].... [W]e *clarify* that the trial court's decision

> to order the sale of a marital asset prior to the final property decision must be accompanied by factual findings that demonstrate the exceptional circumstances justifying such a sale and that specifically articulate the grounds upon which the order for sale is based." (emphasis added)); *Keane v. Local Boundary Comm'n,* 893 P.2d 1239, 1249–50 (Alaska 1995) ("[W]e *clarify* that the test presented in [our prior case], is still applicable ... [and] 'a different rule applies where the party seeking the injunction stands to suffer irreparable harm and where, at the same time, the opposing party can be protected from injury.' " (emphasis added) (citation omitted)).
>
> We conclude that the dissent's "reliance on words, phrases, and quotations" over substantive legal conclusions in this case confuses dicta from the Court's actual holding. Judith M. Stinson, *Why Dicta Becomes Holding and Why It Matters,* 76 BROOK. L.REV.. 219, 222 (2010). The Supreme Court, as the ultimate arbiter of federal law, has counseled that "unless we wish anarchy to prevail within the ... judicial system, a precedent of this Court must be followed by the lower ... courts [on issues of federal law] no matter how misguided the judges of those courts may think it to be." *Hutto v. Davis,* 454 U.S. 370, 375, 102 S.Ct. 703, 70 L.Ed.2d 556 (1982). *Baby Girl* compels today's result.

The [United States] Supreme Court has articulated the federal standard, and its application to this case is clear: ... ICWA does not authorize [Biological] Father's retention of custody. Therefore, we reject [Biological] Father's argument that 1915(a)'s placement preferences could be an alternative basis for denying the Adoptive Couple's adoption petition. The Supreme Court majority opinion *unequivocally states* [ ] [that] "§ 1915(a)'s preferences are inapplicable in cases where no alternative party has formally sought to adopt the child."... As the opinion suggests, at the time Adoptive Couple sought to institute adoption proceedings, they were the only party interested in adopting [Baby Girl]. *Because no other party has sought adoptive placement in this action, § 1915 has no application in concluding this matter* .... [100]

100 *Adoptive Couple v. Baby Girl,* 404 S.C. 483, 746 S.E.2d 51, 52–53 (2013) (footnote and citation omitted) (emphasis added), *petitions for reh'g denied,* 404 S.C. 490, 746 S.E.2d 346 (2013), *stay denied,* — U.S. —, 134 S.Ct. 32, — L.Ed.2d — (2013).

The Supreme Court's federal standard is now clear, and consequently § 1915(a)'s preferences will not apply in this case.

The dissent asserts that *Baby Girl* is factually distinguishable because "[r]ather than a termination of parental rights through a private adoption arranged by a non-Indian parent after an Indian parent abandoned the child, this was a state-sponsored parental rights termination and a state-sponsored adoptive placement clearly subject to ICWA." The Supreme Court previously has explicitly discussed distinctions between voluntary and non-voluntary relinquishments of parental rights in the context of ICWA; it did not do so in *Baby Girl.* In *Mississippi Band of Choctaw Indians v. Holyfield* (*Holyfield*), the Court noted that while the focus of Congressional testimony on ICWA was "on the harm to Indian parents and their children who were involuntarily separated by decisions of local welfare authorities, there was also considerable emphasis on the impact on the tribes themselves [from] the massive removal of their children" [101] outside of this context. [102] The *Holyfield* decision involved the voluntary adoption of twin babies. [103] ***175** The Court concluded that ICWA still applied to such a situation because "[t]ribal jurisdiction under § 1911(a) was not meant to be defeated by the actions of individual members of the tribe," [104] and congressional intent clearly indicated that an individual Indian could not defeat ICWA's jurisdictional scheme by voluntary action. [105]

101 490 U.S. 30, 34, 109 S.Ct. 1597, 104 L.Ed.2d 29 (1989).

102 *Id.* at 49–51, 109 S.Ct. 1597 (discussing how Congress subjects non-Indian family placements of young Indian children to ICWA's "jurisdictional and other provisions, *even in cases where the parents consented to an adoption,* because of concerns going beyond the wishes of individual parents" (emphasis added)).

103 *Id.* at 37, 109 S.Ct. 1597. In *Holyfield* a petition for adoption was filed for twin babies whose parents were enrolled members of the Mississippi Band of Choctaw Indians and residents and domiciliaries of the tribal reservation in Mississippi. *Id.* The twins were born 200 miles from the reservation, and the parents executed consent-to-adoption forms leading to the adoption of the children by non-Indian adoptive parents. *Id.* at 37–38, 109 S.Ct. 1597. The tribe moved to vacate and set aside the decree of adoption. *Id.* at 38, 109 S.Ct. 1597. The Supreme Court held the children were "domiciled" on the reservation within the meaning of ICWA's exclusive tribal jurisdiction provision even though they were never physically present on the reservation themselves, and the trial court was without jurisdiction to enter

the adoption decree even though the children were "voluntarily surrendered" for adoption. *Id.* at 48–51, 109 S.Ct. 1597.

104 *Id.* at 49, 109 S.Ct. 1597.

105 *Id.* at 51, 109 S.Ct. 1597.

In *Holyfield,* the Court adopted and applied its broad-sweeping interpretation of ICWA to all types of parental rights relinquishment cases, including those arising out of a parent's voluntary action. If in *Baby Girl* the Court had intended to limit its holding to voluntary adoptions, it certainly could have articulated such a restriction. But no such limiting language appears in the Court's opinion in *Baby Girl.* Because the Court did not limit its holding in *Baby Girl* to voluntary adoptions, we reject the Tribe's and the dissent's attempt to factually distinguish *Baby Girl* from the case before us where the adoption resulted from state-initiated child protective proceedings.

B. Elise Did Not Formally Seek To Adopt Dawn.

[3] **[4]** We are "not bound by decisions of federal courts other than the United States Supreme Court on questions of federal law." [106] But in cases where the Supreme Court has decided a question of federal law that is directly applicable to and binding on the case we are to decide, we "owe obedience to the decisions of the Supreme Court of the United States ... and a judgment of the Supreme Court provides the rule to be followed ... until the Supreme Court sees fit to reexamine it." [107]

106 *Totemoff v. State,* 905 P.2d 954, 963 (Alaska 1995) (citing *In re F.P.,* 843 P.2d 1214, 1215 n. 1 (Alaska 1992)).

107 *McCaffery v. Green,* 931 P.2d 407, 415 (Alaska 1997) (Rabinowitz, J., dissenting) (quoting 1B JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 0.402[1], at 1–10 (2d ed.1996)) (internal quotation marks omitted).

[5] After Dawn was placed in emergency foster care, the Tribe early on provided Elise's name to OCS as a potential placement option in its CINA Rule 8(c)(7) disclosures. [108] Elise discussed her initial interest in being a placement with OCS, but she was ruled out at that time because an adult son living with her had a barrier-crime. [109] Dawn was placed with non-Native foster parents in Anchorage so that she could be closer to her mother while Jenn completed treatment, and the parties stipulated that there was good cause to deviate from ICWA's placement preferences during this period while Jenn worked toward reunification with Dawn. [110] In August 2009 Elise contacted OCS to report that her son had moved out; she confirmed that she still sought placement, but in December 2009 a representative from the Association of Village Council Presidents visited Elise's home in Tununak on OCS's behalf and noted potential hazards in the home that needed to be addressed before placement could occur. [111] Elise assured OCS she would remedy these issues. [112] During this period Jenn was working toward reunification with Dawn, [113] and Elise understandably wished to support her daughter in that endeavor.

108 *Tununak I,* 303 P.3d 431, 433 (Alaska 2013).

109 *Id.* at 433–34.

110 *Id.* at 434.

111 *Id.*

112 *Id.*

113 *Id.*

The critical piece, however, is Elise's failure to formally assert her intent to adopt Dawn as OCS moved toward terminating Jenn's parental rights. The superior court denied OCS's first petition to terminate parental rights in November 2010, and a second petition was filed in April 2011 that ultimately resulted in termination in September 2011. At a status conference in February 2011 the superior court advised Elise that placement with Jenn was not a viable option due to ***176** Jenn's continued mental health and drug issues. And when the Smiths filed a formal petition to adopt Dawn on November 3, 2011, Elise did not file a competing adoption petition or any other formal request that might serve as a proxy for such a petition. [114] In other words, knowing that the Smiths had the only legally viable request for adoption before the court at that time, Elise did not file a competing request to be considered an adoptive parent for Dawn prior to the placement hearing.

114 *See id.* at 435.

[6] Elise did appear at the November 14, 2011 placement hearing and testified that she wanted to adopt Dawn. [115] She also testified that she had filed a formal adoption petition herself in Bethel. From the record developed by the parties both in the superior court and in this court, there is no indication that Elise filed an adoption petition or otherwise

filed *any* formal court document demonstrating her intent to adopt Dawn. In its briefing to us the Tribe conceded that no court petition was filed. The superior court found Elise's testimony on her desire to adopt "less than convincing," observing that Elise also said that she wanted to adopt Dawn because the Tribe wanted her to and pointing out that she had maintained almost no contact with Dawn and knew nothing of Dawn's life in Anchorage. The superior court made this credibility determination and our role as the reviewing court is not to reweigh the evidence on this point, but instead to "review a trial court's decision in light of the evidence presented to that court." [116]

115 *Id.* at 435, 437–38.

116 *Chloe O. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 309 P.3d 850, 856 (Alaska 2013).

In *Baby Girl,* Biological Father displayed a much higher level of involvement, but the Supreme Court nonetheless found his efforts insufficient. Biological Father requested a stay of the adoption proceedings after learning of Adoptive Couple's pending request and sought custody of Baby Girl. [117] He participated in a trial in the South Carolina Family Court and was awarded custody, [118] had that custody order affirmed by the South Carolina Supreme Court, [119] and participated in the appeal before the United States Supreme Court. Notwithstanding this active participation by Biological Father at every level of the state and federal litigation, the Supreme Court still found that "he did not seek to *adopt* Baby Girl; instead, he argued that his parental rights should not be terminated in the first place." [120] In other words, because Biological Father did not "formally [seek] to adopt" Baby Girl, the Supreme Court held that he could not be an ICWA preferred placement—he was not an "alternative party" that triggered § 1915(a)'s adoptive preferences. [121]

117 *Baby Girl,* 133 S.Ct. 2552, 2558–59 (2013).

118 *Id.* at 2559.

119 *Id.*

120 *Id.* at 2564 (emphasis in original).

121 *Id.* at 2565 ("Nor do § 1915(a)'s rebuttable adoption preferences apply when no alternative party has formally sought to adopt the child.").

Applying the Supreme Court's controlling precedent to the facts before us, it is clear that this is also a case where "there simply is no 'preference' to apply [as] no alternative party that is eligible to be preferred under § 1915(a) has come forward" [122] to adopt Dawn. Because the Smiths were the only family that, in the words of the Supreme Court, "formally sought to adopt" Dawn, § 1915(a)'s "rebuttable adoption preferences [do not] apply [because] no alternative party has formally sought to adopt [this] child." [123] In short, we are bound by *Baby Girl*'s interpretation of this subsection of ICWA, and cannot ignore the Supreme Court's clear, unqualified ruling on a matter of federal Indian law.

122 *Id.* at 2564.

123 *Id.* at 2565.

C. Alaska CINA Rule 8(c)(7) Disclosures Are Not Analogous To Requiring An Individual To Formally Seek To Adopt A Child.

[7] We are likewise not persuaded by the Tribe's argument that Elise's contact information ***177** on the Tribe's CINA Rule 8(c)(7) disclosure in the underlying CINA case amounts to a formal adoption request. Rule 8(c)(7) directs that a tribe shall "without awaiting a discovery request, provide to other parties ... names and contact information for extended family of the child, a list of potential placements under ... § 1915, and a summary of any tribal services or tribal court actions involving the family." These initial disclosures must be made within 45 days of the order granting intervention. [124]

124 CINA Rule 8(c)(7).

A tribe's production of contact information for possible placements is neither equivalent nor analogous to a formal adoption petition. Rule 8(c)(7) is a discovery procedure; it requires disclosure of potential placement options for OCS to consider. A Rule 8(c)(7) disclosure was filed by the Tribe; it does not in any way represent a clear expression by Elise (or anyone else) of a formal intent to adopt the child. An adoption petition, on the other hand, is the legally "formal" way for a person to express a readiness and willingness to adopt a child. In *Baby Girl,* the Supreme Court envisioned a bright-line test: in order to qualify for ICWA § 1915(a)'s adoptive placement preference, one must first "formally seek" to adopt the child by filing a petition for adoption. [125] If Biological Father did not meet this bright-line standard, notwithstanding his significant involvement at every level of the *Baby Girl* case, the Tribe's tender of Elise's contact information shortly after the Tribe's intervention in this case cannot meet the standard of "formally seeking" to adopt.

125 *Baby Girl,* 133 S.Ct. at 2564.

D. The Tribe's Policy Considerations

Finally, the Tribe argues that if we interpret *Baby Girl* to hold that ICWA's placement preferences are inapplicable until an alternative Native adoptive family member files a competing adoption petition, this decision will place a difficult burden on Native families, which have the fewest legal and financial resources, and create a dangerous incentive for OCS to place Native children in the first available home "except in the rare case when a Native family files its own adoption petition." The dissent echoes the Tribe's concerns, noting that "at least one state practice guide" does not read *Baby Girl* to mean an adoption petition must be filed; rather, all the practice guide cautions is that the adoptive candidate "formally" assert his or her intent to adopt the child and take "proper steps" to convey these intentions to the court. [126]

126 *See* CHRISTINE P. COSTANTAKOS, JUVENILE COURT LAW & PRACTICE § 13:12 (2013).

But the dissent misses the point of the practice guide. The practice guide concludes that "[f]or practitioners representing a parent of an Indian child who wants assurances that his or her child will be placed with another family or tribal member if adoption is needed, the lesson is clear: identify early on any family members, relatives, or tribal members who are willing and desirous of custody and take *proper steps* to *formally* convey their intentions to the court in this regard." [127] As we have explained, we read *Baby Girl* to mean that filing a petition for adoption *is* "formally" asserting an intent to adopt using the "proper steps." And while we do not disregard the Tribe's policy concerns, neither may we disregard the holding of the Supreme Court on this matter of federal law.

127 *Id.* (emphasis added).

Having said this, we urge tribes and OCS to enable and assist tribal members to seek placement early in CINA and voluntary adoption cases, accompanied by a formal adoption petition once it appears that OCS's goal for the child is adoption. The Alaska Court System, attorneys representing tribes in Alaska, the CINA bar, the probate bar, and others will work to develop appropriate adoption forms and online information and instructions to assist tribes and potential adoptive parents in navigating this requirement.

We also stress that OCS remains bound to comply with § 1915(a)'s adoptive placement preferences for "(1) a member of the child's extended family; (2) other members of the ***178** Indian child's tribe; or (3) other Indian families." And our decision in *Tununak I* directs that "OCS must prove by clear and convincing evidence that there is good cause to deviate from ICWA § 1915(a)'s adoptive placement preferences." [128] Implicit in this holding is the understanding that *before* the court entertains argument that there is good cause to deviate from § 1915(a)'s preferred placements, it must searchingly inquire about the existence of, and OCS's efforts to comply with achieving, suitable § 1915(a) preferred placements. Contrary to the dissent's suggestion, today's decision has no bearing on OCS's duty to comply with the express purpose of ICWA "to promote the stability and security of Indian tribes and families." [129] We anticipate that our decisions in *Tununak I* and today will highlight the importance of OCS identifying early in a CINA case all potential preferred adoptive placements, and the importance of a person claiming preferred placement filing a petition for adoption, in order to effectuate Congress's intent "to protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society." [130]

128 *Tununak I,* 303 P.3d 431, 450 (Alaska 2013).

129 *D.J. v. P.C.,* 36 P.3d 663, 677 (Alaska 2001) (internal quotation marks omitted) (citing 25 U.S.C. § 1902).

130 *Tununak I,* 303 P.3d at 441–42 (citing *Miss. Band of Choctaw Indians v. Holyfield,* 490 U.S. 30, 37, 109 S.Ct. 1597, 104 L.Ed.2d 29 (1989)).

> Additionally, as the dissent acknowledges, § 1915(e) requires OCS to document its "efforts to comply with the order of preference specified in [§ 1915(a)]" when such a placement is made following a properly filed petition. We expect that the superior court will carefully and actively scrutinize OCS's efforts in identifying potential adoptive placements and complying with its obligations under § 1915(a) and our case law.

V. CONCLUSION

Because we are bound to follow the United State Supreme Court's decision in *Baby Girl,* and because no one but the Smiths formally sought to adopt Dawn, we AFFIRM the superior court's grant of the adoption and VACATE *Tununak I*'s prior order for a renewed good cause hearing in the

underlying placement matter. The remainder of our opinion in *Tununak I* is unaffected by our decision today.

WINFREE, Justice, dissenting.

WINFREE, Justice, dissenting.

I respectfully disagree with today's decision. In my view the court overstates the United States Supreme Court's holding in *Adoptive Couple v. Baby Girl* (*Baby Girl*) [1] and understates the nature of the underlying adoptive placement proceeding in this case, discussed at some length in *Native Village of Tununak v. State, Department of Health & Social Services, Office of Children's Services* (*Tununak I*). [2]

1 — U.S. ——, 133 S.Ct. 2552, 186 L.Ed.2d 729 (2013).

2 303 P.3d 431 (Alaska 2013).

Baby Girl arose from a state court private adoption proceeding where: (1) the Indian father abandoned the child before birth; (2) the non-Indian mother found an appropriate couple willing to adopt the child; and (3) the state's statutes provided that under these circumstances the father's parental rights could be terminated and the adoption completed. [3] But the father contested the termination of his parental rights and the adoption, arguing that because the child was an Indian child under the Indian Child Welfare Act (ICWA), [4] he was entitled to ICWA's protections against the termination of his parental rights. [5]

3 133 S.Ct. at 2558–59; *Adoptive Couple v. Baby Girl* (*Adoptive Couple*), 398 S.C.625, 731 S.E.2d 550, 553–56, 561 (2012), *rev'd,* —— U.S. ——, 133 S.Ct. 2552, 186 L.Ed.2d 729.

4 25 U.S.C. §§ 1901–1963 (2012).

5 *Baby Girl,* 133 S.Ct. at 2559; *Adoptive Couple,* 731 S.E.2d at 555–56.

Because the case involved only the termination of the father's parental rights, the focus of the Supreme Court's decision was on ICWA §§ 1912(d) and (f), neither of which is at issue in this case. The Court first addressed § 1912(f), noting that it

> ***179** provides that "[n]o termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, ... that the *continued custody* of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." [6]

6 *Baby Girl,* 133 S.Ct. at 2560 (alteration and emphasis in original).

The Court held that § 1912(f) was inapplicable because the father never had legal or physical custody of the child, [7] and noted that ICWA's protections were not applicable: "In sum, when, as here, the adoption of an Indian child is voluntarily and lawfully initiated by a non-Indian parent with sole custodial rights, the ICWA's primary goal of preventing the unwarranted removal of Indian children and the dissolution of Indian families is not implicated." [8]

7 *Id.* at 2562.

8 *Id.* at 2561.

The Court next addressed § 1912(d), noting it "provides that '[a]ny party' seeking to terminate parental rights to an Indian child under state law 'shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed *to prevent the breakup of the Indian family* and that these efforts have proved unsuccessful.' " [9] The Court held that § 1912(d) was inapplicable because the father had abandoned the child and there was no family unit to protect:

9 *Id.* at 2562 (alteration and emphasis in original).

> [W]e hold that § 1912(d) applies only in cases where an Indian family's breakup would be precipitated by the termination of the parent's rights. The term breakup refers in this context to the discontinuance of a relationship, or an ending as an effective entity. But when an Indian parent abandons an Indian child prior to birth and that child has never been in the Indian parent's legal or physical custody, there is no relationship that would be discontinued—and no effective entity that would be ended—by the termination of the Indian parent's rights. In such a situation, the breakup of the Indian family has long since occurred, and § 1912(d) is inapplicable. [10]

10 *Id.* (alterations, citations, and internal quotation marks omitted).

The Court then addressed the state court's dicta—that even if the father's parental rights were properly terminated, §

1915(a)'s adoptive placement preferences still would apply—with its own dicta: [11]

11 *See id.* at 2557 (stating §§ 1912(f) and (d) rulings were holdings, but stating § 1915(a) discussion was clarification to state court).

> In the decision below, the [state court] suggested that if it had terminated Biological Father's rights, then § 1915(a)'s preferences for the adoptive placement of an Indian child would have been applicable....
>
> > Section 1915(a) provides that "[i]n any adoptive placement of an Indian child under State law, 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." [But] § 1915(a)'s preferences are inapplicable in cases where no alternative party has formally sought to adopt the child. This is because there simply is no "preference" to apply if no alternative party that is eligible to be preferred under § 1915(a) has come forward. [12]

12 *Id.* at 2564 (citation omitted).

The Court noted that the father had been contesting the termination of his parental rights rather than seeking to adopt the child, that the paternal grandparents had not sought custody of the child, and that the tribe had not presented any tribal member seeking to adopt the child. [13] Thus, no one with a § 1915(a) preference had "come forward" to adopt the child. [14]

13 *Id.*

14 *Id.*

From this, today the court interprets the Supreme Court as requiring that "with respect ***180** to adoptive placements for an Indian child *under state law*," [15] a formal state court adoption petition, or a formal "proxy," must be filed before a person will be considered for adoptive placement preference under § 1915(a). [16] But in my view: (1) the Supreme Court imposed no such requirement, which would impliedly preempt state adoption procedures; [17] (2) as this case amply demonstrates, such a requirement elevates form over substance; and (3) such a requirement in the context of this case flies in the face of ICWA's express purpose.

15 *Id.* at 2558 (emphasis added).

16 It is undisputed that in this case the grandmother did not file a state court adoption petition. The court notes the grandmother's testimony that she had petitioned for placement and adoption, and then notes there is no such petition in the state court. But the grandmother was not asked whether she was referring to paperwork filed in state court or tribal court, or even whether it was paperwork given to the Office of Children's Services. When the grandmother testified during the adoption placement hearing, the adoption petition question was a side-issue directed to whether she truly wanted to adopt. Because the record for this appeal was created well before a formal adoption petition requirement became an issue, the record before us does not reveal to what the grandmother was referring in her testimony; it may be the "proxy" for a state court adoption petition that the court says is missing in this case.

17 *Cf. In re Brandon M.*, 54 Cal.App.4th 1387, 63 Cal.Rptr.2d 671, 677–78 (1997) ("Congress clearly intended that [ICWA] exist side-by-side with the child custody laws of the 50 states and necessarily understood that the courts of those states would and should attempt to harmonize, not presume conflicts between, the two."); *In re Adoption of A.B.*, 245 P.3d 711, 719 (Utah 2010) ("So long as [ICWA's] core protections are honored and the intent of ICWA is preserved, states may fashion the underlying procedural framework.").

The Supreme Court made no holding about § 1915(a), [18] but observed that § 1915(a) does not apply when no eligible person "has formally sought to adopt the child ... because there simply is no 'preference' to apply if no alternative party that is eligible to be preferred under § 1915(a) has come forward." [19] The Court's initial overview of its decision stated it was clarifying that § 1915(a) preferences are inapplicable if no eligible candidates "have sought to adopt the child," without using the word "formally." [20] The Court did not hold that whether an eligible candidate has come forward is a matter of federal law. And it certainly did not hold as a matter of federal law that § 1915(a) can apply only when an eligible person has filed an adoption petition in state court. [21]

18 The court today asserts that I am mistaken on this point, concluding that the Supreme Court's decision about § 1915(a) constitutes a "holding." I prefer to rely on the Supreme Court's own statements about its decision:

> [W]e *hold* that 25 U.S.C. § 1912(f) ... does not apply when, as here, the relevant parent never had custody of the child. We further *hold* that § 1912(d) ... is

> inapplicable when, as here, the parent abandoned the Indian child before birth and never had custody of the child. Finally, we *clarify* that § 1915(a) ... does not bar a non-Indian family ... from adopting an Indian child when no other eligible candidates have sought to adopt the child.
>
> *Baby Girl,* 133 S.Ct. at 2557 (emphasis added). I might agree with the court's conclusion had Baby Girl actually involved the application of § 1915(a)'s adoption placement preferences, even in part. But it did not—the questions actually presented and decided were whether §§ 1915(d) and (f) applied to the statutory parental rights termination in the state court. I do not reject the notion that clarification of a holding can itself be a holding; that is not the case here.

19 *Id.* at 2564.

20 *Id.* at 2557.

21 *Cf. id.*

Yet today the court asserts that state courts are constrained by the Supreme Court's decision and now can apply § 1915(a) preferences only when competing state court adoption petitions exist. It is not at all self-evident that this is what the Supreme Court meant,[22] and it is even less self-evident that ***181** the Supreme Court impliedly created a monolithic federal rule trumping state court adoption procedures. The Court's clarification certainly leaves room for states to determine under their own adoption procedures when an eligible candidate has come forward such that the preferences should be applied.[23] *Baby Girl* does not compel today's result; today's result comes directly from this court and imposes a new state-law barrier to § 1915(a)'s adoption placement preferences.[24]

22 At least one state practice guide does not read *Baby Girl* to mean an adoption petition must be filed. In Nebraska, the Juvenile Court Law and Practice guide cautions practitioners that *Baby Girl* "eliminates the need for a party to demonstrate good cause to depart from the ICWA adoptive-placement preferences, where no one described in those statutorily-designated preferences has stepped forward to *formally assert an intent* to acquire custody of, or to adopt the child." CHRISTINE P. COSTANTAKOS, JUVENILE COURT LAW & PRACTICE § 13:12 (2013) (emphasis added). The practice guide merely directs that, "[f]or practitioners representing a parent of an Indian child who wants assurance that his or her child will be placed with another family or tribal member if adoption is needed, the lesson is clear: identify early on any family members, relatives, or tribal members who are willing and desirous of custody *and take proper steps to formally convey their intentions to the court* in this regard." *Id.* (emphasis added). This approach makes abundant sense to me.

23 *Cf. Baby Girl,* 133 S.Ct. at 2558 (noting that the § 1915(a) preferences apply "with respect to adoptive placements for an Indian child *under state law* " (emphasis added)); *In re Adoption of A.B.,* 245 P.3d 711, 719 (Utah 2010) (noting "states may fashion the underlying procedural framework" for applying ICWA's substantive standards); *State ex rel. C.D.,* 200 P.3d 194, 209 (Utah App.2008) (noting "there are no express statutory provisions declaring [the procedure for] compl[ying] with the ICWA's placement preferences").

> In fact, on remand of *Baby Girl,* the state court applied its own adoption law in determining whether newly filed competing adoption petitions in the case were eligible for § 1915(a) preferences; the court held the petitions were ineligible because the "litigation must have finality, and it is the role of this court to ensure 'the sanctity of the adoption process' *under state law* is 'jealously guarded.' " *Adoptive Couple v. Baby Girl* (*Adoptive Couple II*), 404 S.C.483, 746 S.E.2d 51, 53 (2013) (emphasis added) (quoting *Gardner v. Baby Edward,* 288 S.C. 332, 342 S.E.2d 601, 603 (S.C.1986)).

24 *Cf. Miss. Band of Choctaw Indians v. Holyfield,* 490 U.S. 30, 36–37, 109 S.Ct. 1597, 104 L.Ed.2d 29 (1989) (stating placement preferences are "[t]he most important substantive requirement imposed on state courts"); *Josh L. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.,* 276 P.3d 457, 465 (Alaska 2012) ("We recognize that the placement preferences under section 1915 are critical to ICWA's goal of promoting the stability and security of Indian tribes and families."); *In re Adoption of Sara J.,* 123 P.3d 1017, 1024 (Alaska 2005) (stating § 1915(a) established federal policy that " 'where possible, an Indian child should remain in the Indian community' " (quoting H.R.Rep. No. 95–1386, at 23, *reprinted in* 1978 U.S.C.C.A.N. 7530, 7546)).

It is self-evident that if no one eligible and suitable for a § 1915(a) adoptive placement preference comes forward to adopt an Indian child, there can be no preferred adoptive placement.[25] This is not a particularly novel understanding; it was precisely the factual situation in *Baby Girl,* and the Supreme Court's language should not be read to suggest anything more. We described the eligibility-suitability determination process in *Tununak I:*

25 As we explained in *In re Adoption of Sara J.*:

> [A]lthough it is correct that the word "preference" generally connotes a choice between two options, we read ICWA's structure and purpose to preclude choosing between preferred and non-preferred placements if the preferred placement is "suitable," as measured by the prevailing social and cultural standards of the Indian community. The existence of a suitable preferred placement precludes *any* consideration of a non-preferred placement unless good cause exists, for example, because another preference has been expressed by the child or the child's biological parents, or because the child has special needs that cannot be met by an otherwise-suitable preferred placement.

123 P.3d at 1028 (emphasis in original) (citation omitted); *see also* Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67,584, 67,594 (Nov. 26, 1979) (stating one good cause factor for deviation from § 1915(a) is "[t]he unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria").

> [B]efore determining whether good cause exists to deviate from the placement preferences, a court must first inquire as to whether any suitable preferred placements exist.
>
> The "preferred placement" inquiry requires a court to apply the statutory framework and follow the tiered order of preference mandated by ICWA, i.e., give preference first to a member of the child's extended family, then to other members of the Indian child's tribe, and then to other Indian families. This does not end the inquiry, however, as the court must also assess the suitability of each prospective placement if a party alleges that a preferred placement is unsuitable. In other words, the court must determine not only that a placement is preferred, but also that ***182** the placement would be a suitable caretaker for the child. [26]

26 303 P.3d 431, 450 (Alaska 2013) (citations omitted).

But after today's decision, it does not appear that a trial court has to make any inquiry about preferential adoptive placement unless an eligible person actually files an adoption petition. [27] And now, when multiple relatives in a village might consider adopting a child after a termination of parental rights, they cannot simply participate in adoptive placement proceedings in the child in need of aid case to determine who is eligible and suitable, but rather must file separate and competing formal adoption petitions.

27 *Cf.* CINA Rule 10.1(b) (requiring continuing court inquiry regarding compliance with § 1915(b)'s placement preferences prior to termination of parental rights). The CINA rules do not explicitly require such an inquiry for an adoptive placement.

> One can only wonder about the impact of today's decision on the State's duties regarding § 1915(a)'s placement preferences. We have not had occasion to consider the exact contours of the State's duty to search for eligible preferred adoptive placements and assist such parties in coming forward. The Bureau of Indian Affairs Guidelines assume that a "diligent search" will be made for a preferred adoptive placement and that an unsuccessful search will be good cause to deviate from § 1915(a)'s mandated preference list. Guidelines for State Courts, Indian Child Custody Proceedings, 44 Fed.Reg. at 67,594. And § 1915(e) requires the State to document its "efforts to comply with the order of preference specified in [§ 1915]." I have previously expressed the view that the State has an affirmative duty to effectuate placement preferences when possible. *Josh L.*, 276 P.3d at 472 (Winfree, J., dissenting). Today's decision presents interesting questions about the State's duties. Does the State have a duty to seek out and advise those eligible for a § 1915(a) preference that a state court adoption petition must be filed before they will be considered? And what if, as is the case here, the State simply does not want an eligible person under § 1915(a) to have an adoptive placement preference? Can the State stand behind its view that the grandmother was not "suitable" and it therefore had no duty to assist her with an adoption petition? Or did the State breach its duty to the grandmother and the Tribe? The Tribe's concern that requiring an adoption petition for consideration under § 1915(a) will lead to a lesser effort by the State to effectuate § 1915(a) is not unfounded.

The tribe makes a persuasive argument that requiring a state court adoption petition to trigger § 1915(a)'s adoptive placement preferences will have disastrous results for Alaska's rural Natives. In many villages the court system has no presence and legal representation is nonexistent. Village relatives who might seek to adopt have little way of knowing when a child has been freed for adoption in an urban child in need of aid court proceeding, or whether a non-Indian foster family has filed an adoption petition. In my view § 1915(a) placement preferences should, *at the very least,* apply when a person seeks adoptive placement in a child in need of aid proceeding. I see no good reason for requiring a state court adoption petition to trigger ICWA's preferences,

and if seeking adoptive placement in a child in need of aid proceeding is not a "proxy" to such a petition, what is?

In *Tununak I* we expressly stated that the adoptive placement proceeding in this case was to determine whether Dawn would be adopted by her grandmother in the village or by her foster parents in Anchorage: "even though the placement determination took place in the context of a CINA proceeding, it is clear that the parties were essentially contesting—and the superior court was essentially determining—adoptive placement for Dawn."[28] Our decision's very substance was how to apply Alaska Adoption Rule 11, which we said applied to the proceeding.[29] And just six months later we expressed that "it was clear in [*Tununak I*] that the issue being contested at the placement review hearing was the child's placement for adoption."[30] But now the court says the grandmother's effort to obtain preferential adoptive placement—in what we said was an adoption proceeding—was not an effort to ***183** "formally" adopt Dawn because she did not file formal adoption paperwork.[31] This adherence to form over substance, especially in an ICWA context, is untenable.

28 303 P.3d at 443.

29 *Id.* at 433, 443–44.

30 *Irma E. v. State, Dep't of Health & Soc. Servs.*, 312 P.3d 850, 855 (Alaska 2013) (citing *Tununak I*, 303 P.3d at 439–40) (noting that in *C.L. v. P.C.S.*, 17 P.3d 769, 772 (Alaska 2001), foster care placement changed into adoptive placement when superior court terminated parents' parental rights and children's foster parents filed petitions to adopt the children).

31 The court suggests the grandmother's participation in the adoptive placement proceeding did not rise to the level of "formally [seeking] to adopt" because, comparing her efforts to those of the biological father in *Baby Girl*, the father's "much higher level of involvement" in the adoption proceedings was still insufficient to constitute a formal adoption effort. This comparison is inapt: the Supreme Court concluded the biological father "did not seek to adopt Baby Girl" because he instead sought to prevent termination of his parental rights, not because his efforts were not sufficiently formal. *Baby Girl*, 133 S.Ct. 2552, 2559 (2013).

Unlike in *Baby Girl*, where the Supreme Court took great pains showing otherwise when analyzing the two ICWA termination provisions at issue, ICWA's purpose is squarely implicated in this case. As the court notes, Dawn's biological parents are Alaska Natives. Rather than a termination of parental rights through a private adoption arranged by a non-Indian parent after an Indian parent abandoned the child, this was a state-sponsored parental rights termination and a state-sponsored adoptive placement clearly subject to ICWA.[32] And here the tribe and maternal grandmother actively sought adoptive placement with the grandmother so the child could live in the village with tribal members.[33] This case compels the application of § 1915(a)'s adoptive placement preferences, and if it does not, it is clear that ICWA is not working the way it should in Alaska.[34]

32 Like *Baby Girl*, this case "concerns a 'child custody proceeding,' which ICWA defines to include proceedings that involve 'termination of parental rights' and 'adoptive placement.' " *Id.* at 2557 n. 1 (citing 25 U.S.C. § 1903(1)).

33 *Cf. id* at 2565 (stating that ICWA "was enacted to help preserve the cultural identity and heritage of Indian tribes"); *see also In re Adoption of Sara J.*, 123 P.3d 1017, 1024 (Alaska 2005) (stating § 1915(a) established federal policy that " 'where possible, an Indian child should remain in the Indian community' " (quoting H.R.Rep. No. 95–1386, at 23, *reprinted in* 1978 U.S.C.C.A.N. 7530, 7546)).

34 Time and time again we see CINA cases involving village children placed in urban foster homes while their parents work to meet the conditions for regaining custody; if the parents ultimately fail, the children rarely return to the village but rather are adopted, often by the foster parents, and remain in urban centers. This case is yet another example.

This case should be remanded to the superior court for a renewed adoption placement hearing, as we contemplated in *Tununak I*.[35] If Dawn's grandmother is a suitable adoptive placement, then, in light of § 1915(a) and absent good cause to deviate from its preferences,[36] the current adoption should be vacated and Dawn should be placed with her grandmother for eventual tribal or state court adoption.

35 303 P.3d 431, 453 (Alaska 2013).

36 *Cf. id.* at 451–53 (discussing factors relevant to good cause to deviate from § 1915(a)'s placement preferences).

I dissent.

All Citations

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