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TRIBAL JURISDICTION OVER INDIAN CHILDREN: MISSISSIPPI BAND OF CHOCTAW INDIANS V. HOLYFIELD

Diane Allbaugh*

Introduction

In 1978, Congress enacted the Indian Child Welfare Act (ICWA), creating exclusive tribal jurisdiction over custody and placement proceedings of Indian children.¹ Yet the ICWA went unaddressed by the United States Supreme Court for more than a decade. Finally, in April 1989, the Supreme Court handed down *Mississippi Band of Choctaw Indians v. Holyfield*,² providing a rigid interpretation of the ICWA's guidelines.

The ICWA statutory provisions support an argument that notice to an Indian tribe, regarding adoption proceedings of an Indian child, is not required when both consenting parents request that it not be given.³ However, a more compelling argument, which was embraced by the Court in *Holyfield*, is that tribes have a statutorily-recognized right to maintain contact with their members. The decision also reinforces the statutorily-protected right of exclusive tribal jurisdiction in child custody proceedings, which goes to the heart of the ICWA.⁴

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1. Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3069 (codified in scattered sections of 25 U.S.C. §§ 1901-1963 (1988)).

2. 490 U.S. 30 (1989).

3. The ICWA states, in pertinent part:

In the case of a placement under subsection (a) or (b) of this section, 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 subsection (b) of this section. *Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That* where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

25 U.S.C. § 1915(c) (1988) (emphasis added).

4. "[C]ongress enacted the ICWA because of concerns going beyond the wishes of individual parents, finding that the removal of Indian children from their cultural setting seriously impacts on long-term survival and has a damaging social and psychological impact on many individual Indian children." *Holyfield*, 490 U.S. at 31.

This note will explore (1) the history of events leading up to the enactment of the ICWA; (2) the statute itself, as a congressional response to historical situations; (3) subsequent state court decisions; (4) the United States Supreme Court's decision in *Holyfield*; and (5) the possible future impact of the ICWA in light of *Holyfield*.

The courts face a delicate task when balancing the interests of the child, tribe, and state according to the provisions of the ICWA. Congress, through the ICWA, has given Indian tribes virtually absolute jurisdiction over Indian child custody proceedings by enhancing the police powers of Indian tribes. Tribal sovereignty is necessary to follow the intent of Congress to preserve the internal welfare of Indian tribes, ensure the integrity of Indian families, and guard the best interests of Indian children.⁵ The Supreme Court upheld the spirit and letter of the ICWA by giving "full faith and credit" to the statute in *Holyfield*.

Indian tribes must be able to adjudicate disputes involving Indians within tribal boundaries without state interference. Moreover, tribes must have the power to decide custody issues concerning Indian children, as this may very well be the deciding factor in the preservation of Indian tribes.

Historical Perspective

Early United States Supreme Court rulings established the unique status of Indian tribes as sovereign nations, although tribes continued to rely on the federal government for protection.⁶ This recognition of sovereignty provided that Indian tribes would retain all the powers of self-government, notwithstanding those reserved to the federal government.⁷

During the late nineteenth and early twentieth centuries, the federal government dealt with Indian tribes in a paternalistic manner, effectively disregarding tribal sovereignty. However, the Indian Reorganization Act of 1934 reinforced tribal sovereignty and the right of tribal self-government.⁸

The courts developed three fundamental approaches to determine the authority of Indian tribes:

5. 25 U.S.C. §§ 1901, 1911 (1988).

6. See *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); see also *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

7. See *United States v. Winans*, 198 U.S. 371 (1905).

8. Indian Reorganization Act, ch. 576, 48 Stat. 984 (1934) (codified at 25 U.S.C. §§ 461-479 (1988)).

(1) An Indian tribe possesses, in the first instance, all the powers of any sovereign state. (2) Conquest renders the tribe subject to the legislative power of the United States and in substance terminates the external powers of sovereignty of the tribe, e.g., its powers to enter into treaties with foreign nations, but does not by itself affect the internal sovereignty of the tribe, i.e., its powers of self-government. (3) These powers are subject to qualification by treaties and by express legislation of Congress, but save as thus expressly qualified, tribes have full powers of internal duly constituted organs of government.⁹

Initially, the Supreme Court prevented states from asserting jurisdiction over Indian tribes on reservations, provided the reservations had not been disestablished.¹⁰ However, interaction between Indians and non-Indians expanded with the enactment of the General Allotment Act, which broke up the tribal land base.¹¹

*Williams v. Lee*¹² established a test which allowed state encroachment into tribal territorial jurisdiction, provided state action did not significantly infringe upon an Indian tribe's self-government.¹³ This test resulted in the states maintaining jurisdiction over purely non-Indian disputes, the federal government holding jurisdiction over actions involving Indians and non-Indians, and Indian tribes retaining jurisdiction over purely Indian disputes.¹⁴

During this time, social developments subjected Indian children to the jurisdiction of state courts. Interracial adoptions, fueled by a declining white birth rate, became popular between the 1940s and 1970s. The increased demand for adoptable children brought more Indian children through state court systems.¹⁵

The practice of interracial adoption was criticized for cheating Indian children out of their cultural heritage. Moreover, agencies involved in the interracial adoptions were criticized for not making good-faith attempts to place minority children with minority families.¹⁶

9. F. COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* 123 (1942 ed.).

10. *Kagama v. United States*, 118 U.S. 375 (1886).

11. *White v. Califano*, 437 F. Supp. 543 (D.S.D. 1977).

12. 358 U.S. 217 (1959).

13. *Id.* at 219.

14. *Id.* at 219-20.

15. R. SIMON & G. ROSENTHAL, *TRANSRACIAL ADOPTION* (1977).

16. *Id.*

Until 1961, states basically intervened into family affairs only to remove children from "dissolute or depraved environments." However, in 1961, evidence of extensive "Battered Child Syndrome" cases prompted states to deal with issues of child abuse and neglect.¹⁷

The impact of legislation addressing child abuse and neglect fell most heavily on "poor" Americans, primarily because the poor receive a wide variety of state social services. Consequently, the poor are more closely observed and are more likely to be reported for suspected child abuse or neglect than the more affluent members of society. Likewise, Indian families were disproportionately affected because of the poverty factor.¹⁸

Many states argued that Indians subjected themselves to state law by leaving their reservations. However, the courts generally recognized tribal interests when considering jurisdictional questions.¹⁹

Even though courts recognized the right of the tribe's continuing interest in its children and the right of Indian children to their native culture and heritage, these disputes continued to be decided in state courts. This resulted in a growing number of cases in which Indian children were removed from their tribes and families and placed in non-Indian homes because the state courts determined that the children had been neglected or abused.²⁰

The Indian Child Welfare Act

The ICWA was enacted by Congress to:

[P]romote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.²¹

17. *Id.*; see also *In re Adoption of Firecrow*, 424 U.S. 382 (1976); *State v. Superior Ct.*, 57 Wash. 2d 181, 356 P.2d 985 (1960); *In re Colwash*, 57 Wash. 2d 196, 356 P.2d 994 (1960).

18. See *supra* note 15. See also *Wisconsin Potawatomes v. Houston*, 393 F. Supp. 719 (W.D. Mich. 1973); *Wakefield v. Little Light*, 276 Md. 333, 347 A.2d 228 (1975).

19. *In re Adoption of Doe*, 89 N.M. 606, 555 P.2d 906 (1976); *In re Greybull*, 23 Or. App. 674, 543 P.2d 1079 (1975).

20. See *Carle v. Carle*, 503 P.2d 1050 (Alaska 1972).

21. 25 U.S.C. § 1902 (1988) (congressional declaration of policy).

The ICWA was a labored product of extensive congressional hearings held during the 93d, 94th, and 95th legislative sessions. Indian tribes and organizations pressed the 1974 Subcommittee on Indian Affairs to conduct oversight hearings to investigate the wholesale removal of Indian children²² from their families and subsequent placement in non-Indian adoptive and foster homes.²³

At the congressional hearings, testimony from a wide variety of public and private witnesses confirmed persistent reports of deprivation of statutory and fundamental rights of Indian tribes, parents, and children.²⁴ The findings of the Senate oversight hearings were supported by the Task Force IV of the American Indian Policy Review Commission. Many of the commission's recommendations were incorporated into the ICWA.²⁵

22. *Id.* § 1903(4).

23. H.R. Rep. No. 1386, 95th Cong., 2d Sess. 9, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 7530, 7550. Listed below is a compilation of the results of the study prepared by the Association on American Indian Affairs:

INDIAN CHILDREN IN ADOPTIVE AND FOSTER CARE

State	Rate of Indians Adopted to Non-Indians	Rate of Indians in Foster Care to Non-Indians
	Percent	Percent
Alaska	460	300
Arizona	420	270
California	840	270
Idaho	1110	640
Maine	100	1910
Michigan	370	710
Minnesota	390	1650
Montana	480	1280
Nevada	100	700
New Mexico	150	240
New York	330	300
North Dakota	280	2010
Oklahoma	440	390
Oregon	110	820
South Dakota	160	2240
Utah	340	1500
Washington	1880	960
Wisconsin	1790	1340
Wyoming	400	1040

24. H.R. REP. No. 1386, 95th Cong., 2d Sess. 10, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 7530, 7532-34.

25. H.R. REP. No. 1386, *supra* note 24, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS at 7550.

To have power, an Indian tribe must have sovereignty. The most important aspect of sovereignty is the power "of the tribe to determine and define its own form of government."²⁶ This power includes the "right to define the powers and duties of its officials . . . and the forms and procedures which are to attest the authoritative character of acts done in the name of the tribe."²⁷ By explicitly giving Indian tribes exclusive jurisdiction over Indian child custody cases, the ICWA enforces tribal sovereignty. Moreover, as set out in the ICWA, the legislative purpose of protecting "the best interests of Indian children" and the promotion of "the stability and security of Indian tribes and families" clearly emphasizes legislative intent to protect tribal sovereignty.²⁸

The ICWA also established distinctive procedural and substantive safeguards to insulate Indian tribes and families from jurisdictional intrusion by the state.²⁹ Decisions affecting child custody are so interwoven with ethnic and social heritage that the choice between either tribal or state court jurisdiction may be dispositive to the outcome of the litigation.³⁰

The ICWA is based upon the belief that Indian tribes are sovereign nations and therefore, tribal courts have the right to decide whether to remove Indian children from their families. The ICWA provides for exclusive tribal jurisdiction over Indian children who reside or are domiciled³¹ on reservations, unless

26. F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 126 (1st ed. reprint 1986).

27. *Id.*

28. 25 U.S.C. § 1902 (1988) (congressional declaration of policy).

29. *Id.* at §§ 1903, 1911.

30. Tribal courts approach child custody proceedings differently than state courts. Judge Tso, Navajo District Court Judge, clarified the difference as follows:

[Y]ou cannot separate native peoples from their culture and tradition. This court takes judicial notice of the fact that in Navajo culture and tradition children are not just the children of the parents but they are children of the clan. In particular, children are consider [sic] members of the mother's clan. While the fact could be used as a element of preference in a child custody case, the courts [sic] wants to point out that the primary consideration is the child's strong relationship to members of an extended family. Because of those strong ties, children frequently live with various members of the family without injury. This is the condition throughout Indian Country. . . . Therefore, the court looks to that tradition and holds that it must consider the children's place in the entire extended family in order to make a judgment based upon Navajo traditional law.

Goldtooth v. Goldtooth, 3 Navajo Rptr. 223, 226 (Window Rock Dist. Ct. 1982).

31. 25 U.S.C. § 1911(a) (1988). Congress failed to define the term "domiciled" or "resides" in the statute. The Bureau of Indian Affairs also declined to define the two terms in the regulations because definitions already existed in state law. See Guideline

federal law grants jurisdiction to the state.³² In addition, if an Indian child is a ward of the tribal court, exclusive jurisdiction remains with the tribal court regardless of the child's residence or domicile.³³

In any state court proceeding, which deals with the placement or adoption of an Indian child not domiciled or residing on a reservation, the tribal court has concurrent jurisdiction.³⁴ The proceeding must be transferred to a tribal court upon the request of either parent, Indian custodian, or the child's Indian tribe.³⁵ Transfer of the court proceeding may be thwarted if: (1) the state can show good cause; (2) either parent objects; or (3) the tribe declines to have the proceeding transferred to the tribal court from the state court.³⁶

When a custody dispute remains in state court, most states follow a two-step procedure. First, the court must determine whether the child is dependent, neglected, or abused. Second, the court must determine whether it is in the child's best interest to return to the parents, place in a foster home, or to have parental rights terminated.³⁷

The ICWA established placement preferences in descending order, which must be followed unless the tribe institutes its own placement preference order:

for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67,584, 67,585 (1979). Suggested amendments to the ICWA, which were made to the Select Committee on Indian Affairs, proposed the following definitions:

"[D]omicile" shall be defined by the tribal law or custom of the Indian child's tribe, or in the absence of such law or custom by Federal common law applied in a manner which recognized that (1) many Indian people consider their reservation to be their domicile even when absent for extended periods and (2) the intent of the Act is to defer to tribal jurisdiction whenever possible.

"Residence" shall be defined by the tribal law or custom of the Indian child's tribe, or in the absence of such law or custom, shall be defined as a place of general abode or a principal, actual dwelling place of a continuing or lasting nature.

S. 1976, 100th Cong., 1st Sess., 133 CONG. REC. S18,534 (daily ed. Dec. 19, 1987) (suggested amendments). This definition of "domicile" would be consistent with the Court's findings in *Holyfield*, 490 U.S. at 47-49.

32. 25 U.S.C. § 1911 (1988).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* § 1912(a)-(f). These subsections provide for (a) notice; (b) appointment of counsel for indigent parents or custodian; (c) examination of reports and documents; (d) remedial services and rehabilitative programs; (e) foster care placement orders; and (f) termination of parental rights.

- (i) a member of the Indian child's family;
- (ii) a foster home licensed, approved or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian operation which has a program suitable to meet the Indian child's needs.³⁸

The Act provides that two factors must be proven to justify involuntary termination of parental rights:

[First, it must be shown 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.

[Second,] [n]o termination of parental rights may be ordered in such proceedings 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 damage to the child.³⁹

The ICWA also provides that a parent may withdraw consent for termination of parental rights "for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent."⁴⁰ Congress also mandated that the federal government, every state, and Indian tribe must give full faith and credit to the "public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent" as any other entity.⁴¹

When a custody matter involving voluntary relinquishment of parental rights of an Indian child is in a state court, the major issue revolves around tribal notice. Although the ICWA requires that notice be given to a tribe when an involuntary proceeding

38. *Id.* § 1915(b). This section also addresses the issues of tribal preference for a different order; personal preference; the desire for parental anonymity; social and cultural standards; and the records of placement.

39. *Id.* §§ 1912(d) & (f).

40. *Id.* § 1913(c).

41. *Id.* § 1911(d).

is in state court,⁴² the ICWA does not specifically address voluntary proceedings.⁴³

Many courts have been concerned about other ambiguities and gaps in the structure of the ICWA. The ICWA does not specifically address the issue of voluntary adoption proceedings of illegitimate Indian children. State courts have disagreed on this issue.⁴⁴ However, the Supreme Court's ruling in *Holyfield* left no doubt concerning the applicability of the ICWA to this type of custody proceeding.⁴⁵

The Bureau of Indian Affairs' Guidelines to State Courts (the Guidelines) provide needed assistance. The Guidelines state that provisions of the ICWA should be liberally construed in order to comply with Congress' intent to keep Indian families together, defer to tribal judgment on matters involving the custody of Indian children, and follow placement preference guidelines.⁴⁶

Amendments were proposed in 1987 to the ICWA that would clarify several confusing areas of the Act. Congress has not yet adopted these amendments. Section 4(1)(iv) addresses the applicability of the ICWA in private placement proceedings.⁴⁷ Although there have been reported instances of abuse by private placement agencies as well as individuals, some state courts restrict the applicability of the ICWA to state agencies only.⁴⁸

State courts are confused over the controversy concerning the existing Indian family theory. This is clarified by section 4(5)(c) of the proposed 1987 amendments.⁴⁹ This section statutorily imputes an existing Indian relationship between Indian children and their tribes.⁵⁰ Congress should seriously consider the proposed amendments as a means to clarify and simplify confusing and ambiguous areas of the ICWA.

42. *Id.* § 1912(a).

43. *Id.*

44. See Adoption of Baby Boy L, 231 Kan. 199, 206, 643 P.2d 168, 175 (1982); Adoption of Baby Boy D, 742 P.2d 1059, 1064 (Okla. 1985); Adoption of T.R.M., 525 N.E.2d 298, 303 (Ind. 1988).

45. *Holyfield*, 490 U.S. at 53, 54.

46. See Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67,584, 67,585 (1979).

47. S. 1976, 100th Cong., 1st Sess., 133 CONG. REC. S18,532 (daily ed. Dec. 19, 1987) (suggested amendments).

48. See generally *Baby Boy L*, 643 P.2d at 174-75.

49. S. 1976, 100th Cong., 1st Sess., 133 CONG. REC. S18,534 (daily ed. Dec. 19, 1987) (suggested amendments).

50. *Id.*

*State Court Decisions**In re Appeal in Pima County Juvenile Action*

Although the Supreme Court did not address issues relating to the ICWA until 1989, numerous state court decisions interpreted and applied the statute in various Indian child custody proceedings. In *In re Appeal in Pima County Juvenile Action*,⁵¹ an unmarried fifteen-year-old Assiniboiné Indian voluntarily relinquished parental rights to her infant child, placing the child with the Nevada Catholic Welfare Bureau for adoption. Six months later, the mother filed a formal document requesting the return of her child and revoking consent for adoption. By then, however, the child had been placed with a family in Arizona who refused to return the child.

The adoptive family subsequently filed a petition in Arizona to terminate Indian parental rights. The petition alleged that the natural mother had abandoned the child. Temporary custody was granted to the adoptive parents, and the natural mother and her tribe were notified of the proceedings. The natural mother requested that her tribe intervene in the Arizona custody proceeding. A tribal judge notified the Arizona court that the tribe wished to intervene and have the custody proceedings transferred to the tribal court in Montana.

The Arizona court refused to transfer the proceedings and severed the natural mother's parental rights, reasoning that: (1) the mother had relinquished her parental rights to the child; (2) the child had resided in Arizona with the adoptive family for more than one year; and (3) the natural mother had not been in contact with the child for six months, constituting abandonment.⁵²

The Arizona court also found that although the natural mother's tribe had filed notice to intervene in the proceeding, it had failed to participate in the matter.⁵³ Moreover, the child was not eligible for membership in the tribe and the "best interest" concern required that the child remain with the adoptive parents.⁵⁴ The court found that the child was domiciled in Arizona and that "removal of the child from his preadoptive home and his return to the mother would result in serious emotional or

51. 130 Ariz. 202, 635 P.2d 187 (Ct. App. 1981), *cert. denied*, Catholic Social Services v. P.C., 455 U.S. 1007 (1982).

52. *Pima County Juvenile Action*, 635 P.2d at 190.

53. *Id.*

54. *Id.*

physical damage to him, and that the petitioner for severance had met its burden of proof beyond a reasonable doubt.”⁵⁵

The tribal court filed a formal motion to intervene and to transfer the proceeding to the tribal court. The tribal court asserted that in light of the fact that the natural mother had withdrawn her consent to adoption, the ICWA required that the proceedings be transferred to the tribal court.⁵⁶

The Arizona Court of Appeals agreed with the tribal court and held that the order severing the natural mother’s parental rights must be vacated and the child must be returned to her.⁵⁷ The appeals court set out three reasons for its findings. First, the Arizona court lacked jurisdiction.⁵⁸ Second, even if the state court had concurrent jurisdiction, it should not have been exercised.⁵⁹ Finally, even if the state court properly had jurisdiction, the burden of proof required for termination of parental rights had not been met.⁶⁰

The appeals court found that the tribal court retained exclusive jurisdiction although the child had been removed from the state for the purpose of adoption. The court stated that “[t]he domicile of an infant born out of wedlock remains that of its mother until a new one is lawfully acquired.”⁶¹

The appeals court declared that the ICWA provision allowing for concurrent jurisdiction did not apply in this case.⁶² The Arizona court refused to transfer jurisdiction because it found “good cause” for retention. However, the appeals court stated that although the term “good cause” is not defined in the ICWA, a definition is contained in the federal regulations which includes, but is not limited to the following circumstances:

- (1) the child’s biological parents are unavailable; (2) no Indian custodian has been appointed; (3) the child has had little contact with the tribe for a significant period of time; (4) the child has not resided on the reservation for a significant period of time; and (5) the child, over 12 years of age, has indicated opposition to the transfer.⁶³

55. *Id.*

56. *Id.* at 190-91.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 191.

61. *Id.*

62. *Id.* at 192.

63. *Id.* at 191.

The appeals court found that the natural mother's request for the return of her child was authorized by the statute, which allows a parent to withdraw consent for termination of parental rights at any time prior to final adjudication. Upon withdrawal of consent, the child must be returned to the parent.⁶⁴

The appeals court reasoned that Congress was not concerned with the motive for the withdrawal of parental consent. The ICWA "provides a higher standard of protection to the rights of parents in termination proceedings."⁶⁵ The appeals court also found that jurisdiction should have been deferred to the tribal court due to evidence of the natural mother's parental fitness and because "qualified" expert witnesses would be more readily accessible in Montana.⁶⁶

Finally, the appeals court addressed the issue of the burden of proof required for termination of parental rights. The appeals court relied on the following statutory provisions:

Section 1912(f) provides:

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.

Section 1912(d) provides:

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.⁶⁷

64. *Id.* at 192 (quoting 25 U.S.C.A. § 1913(c)).

65. *Id.* (citing *E.A. v. State*, 623 P.2d 1210 (Alaska 1981)).

66. *Id.*

67. *Id.* at 192-93 (quoting 25 U.S.C.A. §§ 1912(f) & (d)).

The court held that these provisions were controlling.⁶⁸ Moreover, because the child was only seven months old at the time, the mother was entitled to have the child returned. Any potential harm to the child resulted from the conduct of the adoptive parents rather than adherence to the statutory provisions.⁶⁹ The “evil which Congress sought to remedy by the Act was exacerbated by the conduct here under the guise of ‘the best interests of the child.’”⁷⁰

This case represents precisely the horror that Congress sought to prevent by enacting the ICWA. First, as supported by public policy, the integrity of the Indian family should be preserved. Remedial and rehabilitative programs designed to prevent the breakup of Indian families must prove unsuccessful before an Indian child is removed from the home. The Arizona court failed to address this requirement.

Moreover, it must be determined “beyond a reasonable doubt” that the Indian child would likely sustain serious emotional damage if the parent or Indian custodian continue to have custody. The Arizona court not only failed to apply both prongs of this test, but refused to acknowledge the ICWA as controlling. This was evidenced by the court’s refusal to return the child to the natural mother upon her revocation of consent to terminate her parental rights, as required by the ICWA.

The Arizona appeals court correctly found that the state court lacked jurisdiction in this case. Following the letter and spirit of the ICWA, the Assiniboine Tribe had exclusive jurisdiction over this custody matter. A tribe’s protected interest should not be defeated by actions designed to evade the provisions of the ICWA.

In re J.R.S.

In September 1984 the Supreme Court of Alaska decided *In re J.R.S.*⁷¹ By the time he was nine years old, J.R.S., a member of the tribe of the Village of Chalkyitsik,⁷² had lived with his mother, various maternal family members, and in foster homes.

68. *Id.*

69. *Id.* at 193.

70. *Id.*

71. 690 P.2d 10 (Alaska 1984).

72. Because it is a recognized “Native village” under 43 U.S.C. § 1602(c) (section 3(c) of the Alaska Native Claims Settlement Act), Chalkyitsik is an “Indian tribe” for the purposes of the Indian Child Welfare Act. 25 U.S.C. § 1903(8) (1988). It is J.R.S.’s “tribe” because his natural mother is from Chalkyitsik and he has become a member of the Village. *J.R.S.*, 690 P.2d at 12 n.1 (citation omitted).

During this time, J.R.S.'s mother signed a petition to relinquish her parental rights and the natural father did not contest the petition.⁷³

In December 1982, J.R.S. was adopted by the appellees, M.S.F. and J.J.G. Two months before his adoption, the Village of Chalkyitsik formally intervened to prevent the "Child in Need of Aid" proceeding. When the request was denied, the Village filed a motion to intervene in the adoption proceeding which was also denied.⁷⁴

On the day of the scheduled adoption hearing, the Village filed a document signed by J.R.S.'s mother, M.C.H., which revoked her relinquishment of parental rights. The superior court refused to acknowledge the revocation and granted the appellees' adoption petition. The Village appealed to the Alaska Supreme Court on the grounds that it should have been allowed to intervene and that the natural mother's revocation should have been held valid.⁷⁵

The state argued that the termination proceeding was involuntary, and therefore section 1912, which does not allow for parental revocation, would control. However, the Alaska Supreme Court held that section 1913 of the ICWA,⁷⁶ which applies to voluntary relinquishment of parental rights, controlled in this case. The state supreme court found that relinquishment papers, which the state prepared for the mother's signature, referred to state statutes dealing with voluntary relinquishment. Moreover, both counsel for the natural mother and the court explained the papers to her and found that the mother acted voluntarily and with a clear understanding of the situation.⁷⁷

The state supreme court also noted that section 1912(f) of the ICWA requires that "evidence beyond a reasonable doubt" of likely "serious emotional or physical damage to the child" must be found before involuntary termination of parental rights may proceed.⁷⁸ Because the superior court failed to make this deter-

73. *J.R.S.*, 690 P.2d at 12 n.1.

74. *Id.*

75. *Id.*

76. "In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent." 25 U.S.C. § 1913(c) (1988).

77. *J.R.S.*, 690 P.2d at 13.

78. *Id.*

mination, any order issued under this section of the statute would be invalid.⁷⁹

The court also found that section 1913(c) does not give a parent the right to rescind voluntary relinquishment of parental rights once a final termination order has been entered.⁸⁰ Even though the state supreme court affirmed the superior court's final adoption order, it held that the decision to set aside the ICWA's placement preference system and deny the Village's right to intervene in the proceedings was fatal to that order.⁸¹

The state supreme court determined that the Village's interest in J.R.S.'s adoption proceeding was protected by rule 24(a) of the Alaska Rules of Civil Procedure.⁸² Consequently, this protected interest required that the tribe be allowed to intervene in the custody proceeding.⁸³

It is well settled that Congress may preempt state jurisdiction over Indian child custody and domestic relations matters.⁸⁴ This is precisely what Congress sought to control by enacting the ICWA. The superior court erred by refusing to allow the Village to intervene in J.R.S.'s adoption proceeding. Moreover, the superior court failed to follow the mandated placement preference provisions of the ICWA. The Alaska Supreme Court correctly found that these state actions were fatal to the superior court's decision in *J.R.S.*.

In his dissent, Justice Compton argued that the only interest the tribe had in the proceeding was a "general oversight" interest. Therefore, the tribe's interest was not specifically protected by the ICWA.⁸⁵ The dissent noted:

[N]o statutory right is being denied any person or the Village of Chalkyitsik. No member of J.R.S.'s extended family is seeking to adopt him. No member of J.R.S.'s Indian tribe is seeking to adopt him. The Village of Chalkyitsik has not by resolution altered the statutory preference, and hence the state court is

79. *Id.*

80. *Id.* at 13-14.

81. *Id.* at 15-19.

82. *Id.* at 17-18. "Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." ALASKA R. CIV. P. 24(a).

83. *J.R.S.*, 690 P.2d at 18-19.

84. *Iron Bear v. District Court*, 512 P.2d 1292 (Mont. 1973).

85. *J.R.S.*, 690 P.2d at 19.

not refusing to honor any statutory right given an Indian tribe. . . . The tribe may have an interest in seeing that a child is not adopted by a non-tribal family but this interest has not been recognized by the ICWA.⁸⁶

Justice Compton argued that because the ICWA's placement preference scheme was not an issue in this appeal it should not have been addressed by the court.⁸⁷

The protected interest of tribal continuity and self-government lies at the very heart of the ICWA. In certain instances such as this, the interests of the tribe outweigh the interests of the state. If Indian heritage is to be preserved, the tribes must have the ability to ensure this continuity for future generations.

In re Adoption of Holloway

In *In re Adoption of Holloway*,⁸⁸ a full-blooded Navajo Indian woman allowed her sister to remove her year-old son, Jeremiah, from the Navajo reservation in New Mexico and temporarily place him in a foster home. Jeremiah had lived with his mother on the reservation until he was six months of age. He then lived with his grandmother on the reservation until he was removed by his aunt.⁸⁹

Two months after Jeremiah's removal from the reservation, his mother learned of his pending adoption by a non-Indian couple. Jeremiah's mother signed a consent to the adoption and the adoptive parents immediately filed a petition with the Utah State Court for adoption. The trial court ordered the adoptive parents' counsel to notify Jeremiah's tribe and to obtain its consent before continuing with the adoption proceeding. The tribe was notified five months after the initial adoption hearing. Two years later, the tribe intervened and moved to dismiss the proceeding, arguing that the state court lacked jurisdiction because Jeremiah was an Indian child and was domiciled on the Navajo reservation.⁹⁰

The trial court determined that Jeremiah was domiciled in Utah and denied the tribe's motion to dismiss. The trial court

86. *Id.* at 20.

87. *Id.*

88. 732 P.2d 962 (Utah 1986).

89. *Id.* at 963.

90. *Id.* "An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law." 25 U.S.C. § 1911(a) (1988).

reasoned that Jeremiah's residence had been voluntarily transferred from the natural mother, grandmother, and reservation to the adoptive parents.⁹¹ The trial court stated that it had "good cause"⁹² for retaining jurisdiction based on the fact that Jeremiah's domicile had changed and in light of the extended period of time that Jeremiah had lived with his adoptive parents.⁹³

After several additional hearings, the trial court reaffirmed its decision. The trial court also acknowledged that Jeremiah's mother had withdrawn her consent to the adoption prior to its

91. *Halloway*, 732 P.2d at 963.

92. *Id.* at 963-64 n.2.

In any State proceeding for the . . . termination of parental rights to an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, *in the absence of good cause to the contrary*, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

25 U.S.C. § 1911(b) (1988) (emphasis added). "Good cause" is defined in the *Guidelines for State Courts: Indian Custody Proceedings*. 44 Fed. Reg. 67,584 (1979) (suggested amendments). These guidelines represent the interpretation of various ICWA provisions by the Bureau of Indian Affairs of the Department of Interior. Under the guidelines, "good cause" is defined as follows:

(a) Good cause not to transfer the proceeding exists if the Indian child's tribe does not have a tribal court as defined by the Act to which the case can be transferred.

(b) Good cause not to transfer the proceeding may exist if any of the following circumstances exist:

(i) The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition properly after receiving notice of the hearing.

(ii) The Indian child is over twelve years of age and objects to the transfer.

(iii) The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses.

(iv) The parents of a child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.

(c) Socio-economic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists.

(d) The burden of establishing good cause to the contrary shall be on the party opposing the transfer.

Id. at 67,591.

93. *Halloway*, 732 P.2d at 963.

decision. A hearing was finally scheduled one year later on the petition for termination of parental rights.⁹⁴

Ten days before the hearing date, the tribal court handed down a decision which held that Jeremiah was a domiciliary of the Navajo nation and that the tribal court had exclusive jurisdiction to determine his custody. The tribal court filed a motion with the state court requesting that full faith and credit be given to its decision and that the state proceedings be dismissed. The tribe's motion was denied on the grounds that it was untimely. Subsequently, the Utah Supreme Court decided to hear the case to determine whether the trial court properly retained jurisdiction of the proceeding.⁹⁵

The Utah Supreme Court looked to federal law for guidance because of the very limited circumstances under which the ICWA grants state courts jurisdiction in Indian child custody proceedings. The state supreme court focused on subsections (a) and (b) of the ICWA section 1911 as "pivotal provisions" in this decision.⁹⁶ Under these provisions, Indian tribes are granted exclusive jurisdiction over proceedings involving an Indian child "who resides or is domiciled within the reservation" of his tribe.⁹⁷ Moreover, even if an Indian child is not domiciled or residing on a reservation, the state courts, absent good cause, must transfer the custody proceeding to the child's tribal court if the tribe requests a transfer.⁹⁸

The Utah Supreme Court found that:

These provisions are at the heart of the ICWA. The ICWA was passed in 1978 in response to congressional findings that

an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such

94. *Id.* at 964.

[E]very State . . . shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

25 U.S.C. § 1911(d) (1988).

95. *Halloway*, 732 P.2d at 964-65.

96. *Id.* at 965.

97. *Id.*

98. 25 U.S.C. § 1911(a)-(b) (1988).

children are placed in non-Indian foster and adoptive homes and institutions; and

....

... the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.⁹⁹

The state supreme court found that the primary issue was Jeremiah's domicile at the time of the custody dispute. The court found that the federal statutes which address jurisdictional issues were controlling.¹⁰⁰

Although the ICWA does not define "domicile," the court noted that the "law of domicile" was well established. An illegitimate child acquires the domicile of his mother at birth. Even if the child lives apart from his mother, his domicile remains with the mother unless he is abandoned or his domicile is lawfully changed. However, if the child is abandoned by his parents, he acquires the domicile of the people he lives with at that time.¹⁰¹ Under these provisions, the state supreme court held that Jeremiah was domiciled on the Navajo reservation and that the tribe had exclusive jurisdiction until the time that he was removed from the reservation by his aunt.¹⁰²

The next issue the state supreme court addressed was whether Jeremiah's removal from the reservation changed his domicile. The court affirmed the trial court's determination that Jeremiah had been abandoned by his mother. The court supported this view because when Jeremiah's mother learned of the contemplated adoption, she permitted him to remain with the adoptive parents.¹⁰³

The state supreme court held:

There certainly is nothing in the ICWA or its legislative history to suggest that state law controls if, in application, its subtleties bring it into conflict with the ICWA in ways that Congress apparently did not fore-

99. *Halloway*, 732 P.2d at 965 (quoting 25 U.S.C. § 1901(4)-(5) (1982)).

100. *Id.* at 966.

101. *Id.*

102. *Id.*

103. *Id.* at 967.

see. Under general supremacy principles, state law cannot be permitted to operate "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." If it does, state law is preempted. And even if Congress did not intend to preempt state domicile law, state law must bow when the application of that law brings the state and federal policies into conflict.¹⁰⁴

Utah's laws of abandonment and domicile deprived Jeremiah's tribe of exclusive jurisdiction contrary to section 1911 of the ICWA, which grants exclusive jurisdiction to the tribe. However, the court found that Congress intended that Indian tribes should have the authority to determine custody disputes involving Indian children.¹⁰⁵

The Utah Supreme Court criticized Jeremiah's mother, aunt, and adoptive parents for removing him from the reservation and his tribe. The court found that this action was taken with the intent of having the state court place Jeremiah with a non-Indian family. "[T]his receptivity of the non-Indian forum to non-Indian placement of an Indian child is precisely one of the evils at which the ICWA was aimed."¹⁰⁶

The court also criticized Jeremiah's mother for subverting another provision of the ICWA by not executing in writing, and recording "before a judge of competent jurisdiction," her voluntary termination of parental rights petition.¹⁰⁷ By taking advantage of Utah's law, which permits a child's domicile to change in the event of abandonment, Jeremiah's mother bypassed the tribal court to facilitate Jeremiah's adoption by non-Indians.¹⁰⁸

Jeremiah was held to be a domiciliary of the Navajo reservation, over whom the tribal court had exclusive jurisdiction.¹⁰⁹ The state supreme court was sensitive to the fact that during the process of litigating these issues, Jeremiah had lived with his adoptive parents for six years. However, the court stated: "While stability in child placement should be a paramount value, . . . it cannot be the sole yardstick by which the legality of a particular custodial arrangement is judged. Such a standard

104. *Id.* (citations omitted).

105. *Id.* at 968; *see also* 25 U.S.C. § 1911(a)-(b) (1988).

106. *Halloway*, 732 P.2d at 969.

107. *Id.*

108. *Id.* at 969-70.

109. *Id.* at 972.

would reward those who obtain custody, whether lawfully or otherwise, and maintain it during any ensuing (and protracted) litigation.”¹¹⁰ The court left the final determination of Jeremiah’s custody to the tribal court’s “experience, wisdom, and compassion.”¹¹¹

Justice Howe argued in his dissent that Jeremiah’s mother’s acts of abandonment deprived the tribal court of jurisdiction of the custody dispute.¹¹² However, Justice Howe noted that America is a nation of people on the move and Indian people are no less mobile.¹¹³ Many Indians leave their reservations in search of work or a different lifestyle, only returning to visit relatives. Their domicile should be considered on an individual basis. “The purpose of the ICWA, much like our state laws on taxation and elections, will not be defeated because of the mobility of our nation.”¹¹⁴

The Utah Supreme Court followed the intent of the ICWA in holding that the actions of Jeremiah’s mother, aunt, and adoptive family were designed to defeat tribal jurisdiction and were therefore void. Jeremiah was properly domiciled on the reservation, and therefore, the Navajo tribe had exclusive jurisdiction over his custody proceedings.

Mississippi Band of Choctaw Indians v. Holyfield

The previously discussed state court decisions, and many more like them, paved the way for the United States Supreme Court’s first decision concerning the ICWA in *Mississippi Band of Choctaw Indians v. Holyfield*.¹¹⁵ The Court granted plenary review based on “the centrality of the exclusive tribal jurisdiction provision to the overall scheme of the ICWA, as well as the conflict between” state court decisions.¹¹⁶

In *Holyfield*, the unmarried parents of twin infants were enrolled members of the Mississippi Band of Choctaw Indians Tribe and resided on the reservation.¹¹⁷ The parents drove approximately two hundred miles off the reservation to give birth to the twin infants in December 1985. They immediately placed

110. *Id.*

111. *Id.*

112. *Id.* (Howe, J., dissenting)

113. *Id.*

114. *Id.*

115. 490 U.S. 30 (1989).

116. *Id.* at 41.

117. *Id.* at 37.

the infants for adoption with a non-Indian couple, the Holyfields, and signed consent-to-adoption forms. After the adoptive parents filed a petition for adoption, the trial court quickly issued the final adoption decree on January 28, 1986.¹¹⁸

Two months later, the tribe filed a motion to vacate the adoption based on exclusive tribal court jurisdiction as set out in the ICWA. The trial court denied the motion, holding that because the natural parents went to such great efforts to make sure the children were born off the reservation, and because the children had neither resided on, nor had physically been on the reservation, the children were not domiciles of the reservation. Therefore, the state court properly had jurisdiction.¹¹⁹

The Supreme Court of Mississippi affirmed the trial court's ruling and recognized the pivotal issue to be whether the infants were actually domiciliaries of the reservation. The court rejected the tribe's position that the children were domiciled on the reservation by virtue of living within their mother's womb.¹²⁰

The state court discussed the fact that the ICWA's jurisdictional provisions had a solid foundation in pre-ICWA federal and state case law.¹²¹ Consequently, child custody proceedings which involve Indian children domiciled on the reservation fall under exclusive tribal jurisdiction.¹²²

In *Holyfield*, it was not disputed that the twins were "Indian children."¹²³ The issue was whether the twins were "domiciled" on the Choctaw reservation.¹²⁴ In light of this issue, the Court also addressed the issue of whether Congress intended state law

118. *Id.* at 37-38.

119. *Id.* at 38-39.

120. *Id.* at 39 (citations omitted).

121. *Id.* at 42.

122. *Id.*

123. *Id.*; see also 25 U.S.C. § 1903(4) (1988).

124. *Holyfield*, 490 U.S. at 42 & n.16.

'Reservation' is defined quite broadly for purposes of the ICWA. See 25 U.S.C. § 1903(10) (1988). There is no dispute that the Choctaw Reservation falls within that definition.

Section 1911(a) does not apply "where such jurisdiction is otherwise vested in the State by existing Federal law." This proviso would appear to refer to Pub. L. 280, 67 Stat. 588, as amended, which allows States under certain conditions to assume civil and criminal jurisdiction on the reservation. ICWA section 1918 permits a tribe in that situation to reassume jurisdiction over child custody proceedings upon petition to the Secretary of the Interior. The State of Mississippi has never asserted jurisdiction over the Choctaw Reservation under Public Law 280.

Id. (citations omitted).

to define "domicile."¹²⁵ The Court found that federal statutes are intended to give rise to "uniform nationwide application."¹²⁶ Therefore, when Congress enacts a statute, it does not make the application of the statute dependent on state law.¹²⁷

The Court stated:

First, and most fundamentally, the purpose of the ICWA gives no reason to believe that Congress intended to rely on state law for the definition of a critical term; quite the contrary. It is clear from the very text of the ICWA, not to mention its legislative history and the hearings that led to its enactment, that Congress was concerned with the rights of Indian families and Indian communities vis-à-vis state authorities. More specifically, its purpose was, in part, to make clear that in certain situations the state courts did not have jurisdiction over child custody proceedings. Indeed, the congressional findings that are a part of the statute demonstrate that Congress perceived the States and their courts as partly responsible for the problem it intended to correct

Second, Congress could hardly have intended the lack of nationwide uniformity that would result from state-law definitions of domicile. . . . Even if we could conceive of a federal statute under which the rules of domicile (and thus of jurisdiction) applied differently to different Indian children, a statute under which different rules apply from time to time to the same child, simply as a result of her transport from one State to another, cannot be what Congress had in mind.¹²⁸

The Court found that in following the well-settled principles of "domicile,"¹²⁹ it would be "entirely logical that '[o]n occa-

125. *Holyfield*, 490 U.S. at 43.

126. *Id.*

127. *Id.*

128. *Id.* at 44-46.

129. *Id.* at 47-48.

"Domicile" is, of course, a concept widely used in both federal and state courts for jurisdiction and conflict-of-laws purposes, and its meaning is generally uncontroverted. "Domicile" is not necessarily synonymous with "residence," and one can reside in one place but be domiciled in another. For adults, domicile is established by physical presence in a place in connection with a certain state of mind concerning one's intent to

sion, a child's domicile of origin will be in a place where the child has never been."¹³⁰ The natural parents' domicile had always been, and continued to be, the reservation of the Choctaw Tribe. Therefore, even though the infants had never actually been on the reservation, they were domiciled there.¹³¹ In response to the argument that the twins were voluntarily placed for adoption, the Court stated that tribal jurisdiction, under section 1911(a) of the ICWA, was not meant to be circumvented by individual tribal members. Congressional concern extended beyond that of the Indian children and families to include the impact on the tribes themselves in light of the placement of large numbers of Indian children in non-Indians homes.¹³²

The Court cited the Utah Supreme Court's decision in *In re Adoption of Halloway*,¹³³ and agreed that "the law of domicile Congress used in the ICWA cannot be one that permits individual reservation-domiciled tribal members to defeat the tribe's exclusive jurisdiction by the simple expedience of giving birth and placing the child for adoption off the reservation."¹³⁴ Therefore, the Choctaw tribal court had exclusive jurisdiction over the twins' adoption proceeding and the state court's decree granting the adoption was vacated.¹³⁵

Like the court in *Halloway*, the Court took notice of the fact that the twins had lived with the adoptive parents for three years and that separating them would cause considerable pain.¹³⁶ The Court, in citing *Halloway*, deferred to the "experience, wisdom, and compassion of the [Choctaw] tribal courts to fashion an appropriate remedy."¹³⁷

Justice Stevens, Justice Kennedy, and Chief Justice Rehnquist dissented, with Justice Stevens agreeing with the majority that

remain there. One acquires a "domicile of origin" at birth, and that domicile continues until a new one (a "domicile of choice") is acquired. Since most minors are legally incapable of forming the requisite intent to establish a domicile, their domicile is determined by that of their parents. In the case of an illegitimate child, that has traditionally meant the domicile of its mother.

Id. at 48 (citations omitted).

130. *Id.* (citation omitted).

131. *Id.* at 48-49.

132. *Id.* at 49.

133. 732 P.2d 962 (Utah 1986).

134. *Holyfield*, 490 U.S. at 53.

135. *Id.*

136. *Id.*

137. *Id.* at 54.

Congress intended to fashion a “uniform federal law of domicile for the [ICWA].”¹³⁸ However, Justice Stevens did not agree with the majority’s limited definition of domicile. He argued that the natural parents should have had the right to invoke the state court’s adoption procedures, and that the Court’s definition of domicile “distorts the delicate balance between individual rights and group rights recognized by the ICWA.”¹³⁹

Justice Stevens argued that the ICWA was primarily instituted to prevent the unwarranted removal of Indian children from their families and tribes. The statute was not designed to restrict the rights of parents of Indian children.¹⁴⁰

However, if knowledge of tribal traditions is to survive, then in some circumstances the interests of the tribe must outweigh the interests of the individual. The tribal courts, not state courts, are in the best position to weigh the conflicting interests of all concerned and Congress has recognized this by enacting the ICWA.

Conclusion

Indian tribes should play a primary role in adjudicating custody issues concerning Indian children. Indian children are the tribe’s future, and therefore, tribes have a vested interest in ensuring the continuity and integrity of their membership.

In *Holyfield*, the Court tackled the difficult task of balancing the interests of the tribe, the child and the state. The ICWA is based on the essential belief that Indian children and the continuity of their tribes must be protected against unauthorized state intrusion. However, in applying the provisions of the ICWA, inherent ambiguities and omissions have led to disparate state court decisions. Congress should seriously consider implementing the proposed 1987 amendments to the ICWA in order to clarify its provisions.

Undoubtedly, the ICWA was designed to protect the best interests of Indian children, their parents, and their tribes. Public policy demands that we provide for and protect our children. Public policy also demands that we preserve the “family” unit if at all possible to ensure a stable and productive society. The ICWA strives to accomplish these two paramount tasks while enforcing tribal sovereignty and self-government.

138. *Id.* at 55 (Stevens, J., dissenting).

139. *Id.*

140. *Id.* at 57.

The Court's decision in *Holyfield* dictates that the ICWA be read broadly to grant jurisdiction to tribal courts in Indian child custody matters. This decision supports the congressional intent that neither the individual nor the state should be allowed to defeat the purpose of the ICWA.

Addendum

Mr. Holyfield died while this case was pending before the Supreme Court. Upon remand from the United States Supreme Court, the Tribal Court of the Mississippi Band of Choctaw Indians issued its final determination in this case. First, the court determined that the alleged putative father was not the natural father of the twins. Second, the court terminated the parental rights of the natural mother and granted the adoption petition of Vivian Joan Holyfield.¹⁴¹

141. *Holyfield v. Choctaw Social Services/ Mississippi Band of Choctaw Indians, The Natural Mother and Alleged Natural Father*, No. AD 017-90 (Mississippi Band of Choctaw Indians Tribal Ct.) (July 27, 1990) (recorded in "Adoption Book 1, pages 89-90").