UNITED STATES DISTRICT COURT
DISTRICT OF MIND

SAMUEL LAWRENCE, Plaintiff v. ADA APPLETON, Defendant	Case No. 16-cv-05635

EPSILON, District Judge.

This case arises under the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901–1963. Both parties have moved for summary judgment.[*] For the reasons stated below, this court grants the plaintiff's motion for summary judgment and denies the defendant's motion for summary judgment.

I. FACTS

The following facts are not disputed.

Plaintiff Samuel Lawrence is a member of the Wampahannock tribe, a federally recognized Indian tribe. His mother is a full-blooded Wampahannock and a member of the tribe; his father is white and not a member of the tribe. The Lawrence family lives in Harris, a small city in the State of Mind. Harris is located near the Wampahannock tribe's reservation in southern Mind, but the Lawrence family has never lived on the reservation.

Defendant Ada Appleton is white. She lives in Wessex, a middle-class suburb of Metropolis, the largest city in the State of Mind. Wessex is located in the northern part of the state, several hundred miles from Harris.

Both Lawrence and Appleton were gifted musicians. During the summer of 2014, shortly after their graduation from high school, they spent eight weeks as students at the Idyllwild Academy of the Arts, an internationally prominent institution. Idyllwild attracts eminent musicians and teachers to its summer program. In 2014, for example, the guest artists included the Lizzie Borden Trio (pianist Emanuel Ax, cellist Yo-Yo Ma, and violinist Anne-Sophie Mutter).

At some point during the summer, Lawrence and Appleton found themselves romantically attracted to each other. They spent as much time as possible together, and eventually slipped off, on several occasions, to secluded places for unprotected sex.

[*] Competitors may assume that all necessary parties have participated in every stage of the litigation. For the sake of efficiency, this problem identifies only one plaintiff and one defendant.

When the Idyllwild program ended, the pair returned to their hometowns and then went off to different colleges that also were several hundred miles apart. Not long after arriving at her college, Appleton discovered that she was pregnant. Even before that discovery, she had decided to end her relationship with Lawrence.

Meanwhile, Lawrence communicated with Appleton by phone and text. He specifically asked her if she was pregnant, and offered to provide whatever financial and emotional support he could. She explicitly denied that she had become pregnant, assured him that she was doing fine, and stated that she was not prepared to commit to a long-term relationship.

Appleton decided to carry her pregnancy to term and surrender the baby under the terms of Mind's Infant Safe Harbor Act (ISHA). The ISHA allows a custodial parent of a newborn infant up to 21 days of age to surrender the infant to a safe harbor provider. Safe harbor providers include hospitals, physician's offices, medical clinics, police stations, and fire stations. Those providers are required to make "reasonable efforts" to obtain the name and medical history of both birth parents, and the infant's name, date and place of birth, and medical history, but they also must make clear to the surrendering parent that provision of this information is voluntary. Providers also must take the infant to a hospital for observation and necessary medical care, and arrange for the Department of Family Services to take physical custody of the infant. The relinquishing parent may, within 30 days, file a petition in family court to regain custody of the infant. If no such petition is filed, Family Services will seek to place the infant in foster care and ultimately for adoption.[1]

The baby, a girl, was born in April 2015. A week after delivery, Appleton went to a fire station in Wessex and surrendered her newborn infant. She declined to identify the father or to provide any information about him, including his membership in a federally recognized Indian tribe. She also did not file a petition to regain custody, so Family Services placed the infant in foster care. The foster parents subsequently adopted the child. Because Family Services had no information about the infant's status, it did not take any of the actions required by the ICWA before placing the child in foster care or for adoption.[2]

Appleton's baby daughter is an Indian child within the meaning of ICWA in that the infant is an "unmarried person who is under age eighteen and 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)(b).[3] Because Family Services did not know the baby's status as an Indian child, it did not comply with ICWA's notice requirements. *See* 25 U.S.C. § 1912.

Lawrence learned of the baby's birth shortly after her first birthday. After learning Appleton had given birth and surrendered the baby pursuant to the ISHA, he filed suit in this court, pursuant to 25 U.S.C. § 1914, to set aside the adoption for failure to comply with ICWA.

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[1] The ISHA contains provisions that generally immunize surrendering parents and safe harbor providers from liability in most instances. The details of those provisions are not relevant to this case.

[2] Family Services did check the state's putative father registry and published legal notices relating to the placement and adoption. Lawrence admits that those steps more than satisfied the procedural requirements contained in the ISHA, and he has not challenged the constitutionality of that state law.

[3] The infant was eligible for tribal membership under the rules of the Wampahannock tribe.

II. ANALYSIS

A. Jurisdiction

Appleton moved to dismiss for lack of jurisdiction. Because of the need to resolve this case expeditiously to promote the child's welfare, the court deferred a ruling on Appleton's motion until the completion of accelerated discovery. The parties agreed to this timetable and have competed discovery.

ICWA provides that "any parent or custodian from whose custody [an Indian] child was removed . . . may petition any court *of competent jurisdiction* to invalidate such action upon a showing that such action violated any provision of [ICWA]." 25 U.S.C. § 1914 (emphasis added). The italicized language identifies the threshold question in this case: Is a federal court a court of competent jurisdiction for purposes of ICWA?

Appleton relies on cases dating back to the nineteenth century in support of her claim that the federal courts lack jurisdiction over family-law cases. Perhaps the leading example is *In re Burrus*, 136 U.S. 586 (1890), where the Supreme Court said: "The 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." *Id.* at 593–94.

To the extent that a domestic-relations exception to federal jurisdiction exists, it applies in diversity cases. *See, e.g.*, *Williams v. Lambert*, 46 F.3d 1275, 1283–84 (2d Cir. 1995); *McLaughlin v. Pernsley*, 876 F.2d 308, 312 (3d Cir. 1989). Even in the diversity context, the Supreme Court has emphasized that the exception applies only to divorce, alimony, and child custody, but not to tort claims involving family members. *Ankenbrandt v. Richards*, 504 U.S. 689, 703–04 (1992). This is not a diversity case. Instead, it is a federal-question case that arises under ICWA, a federal statute.

More recent Supreme Court decisions also support the conclusion that federal jurisdiction exists in this case. For example, the Court has taken a narrow view of the probate exception, another judicially created limitation on federal jurisdiction. *Marshall v. Marshall*, 547 U.S. 293, 311–12 (2006).

Three recent decisions on same-sex marriage further suggest that the domestic-relations exception does not apply to federal-question cases. In *United States v. Windsor*, 113 S. Ct. 2675 (2013), the Supreme Court thoroughly addressed jurisdictional questions in a case challenging the constitutionality of section 3 of the Defense of Marriage Act, Pub. L. No. 104–199, 110 Stat. 2419 (1996) (codified at 1 U.S.C. § 7) (DOMA). But that discussion focused only on whether the executive branch and the leaders of both houses of Congress had standing to pursue an appeal of a lower-court decision holding section 3 unconstitutional. *See Windsor*, 113 S. Ct. at 2684–89 (concluding that standing existed); *id.* at 2698–705 (Scalia, J., dissenting) (arguing that those parties lacked standing); *id.* at 2711–14 (Alito, J., dissenting) (agreeing with the Court that standing existed). Despite the disagreement on standing, no one suggested that the federal courts lacked jurisdiction to decide the constitutionality of section 3 of DOMA.

Additionally, *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013), which was decided the same day as *Windsor*, focused only on whether proponents of a state ban on same-sex marriage had standing to appeal a ruling that found that ban to be unconstitutional. *Compare id.* at 2661–68 (concluding that the proponents lacked standing) *with id.* at 2668–75 (Kennedy, J., dissenting) (arguing that the proponents did have standing). Again, despite the debate over standing, no justice suggested that the case fell within the domestic-relations exception to federal jurisdiction.

Finally, in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the Court recognized a constitutional right to same-sex marriage. Although this was a 5–4 ruling in which many substantive issues were thoroughly canvassed, the word "jurisdiction" appeared nowhere in the majority opinion or in any of the four dissenting opinions.

Accordingly, Appleton's motion to dismiss for lack of jurisdiction is denied.

B. ICWA

Appleton makes two arguments with respect to the ICWA. First, relying on *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013), she contends that the statute does not apply in this case. *Adoptive Couple* held that ICWA does not cover situations in which an Indian parent never had custody of an Indian child. *Id.* at 2562–63.

But the situation here is quite different from that in *Adoptive Couple*. That case involved an engaged couple in which the biological father knew about the pregnancy, refused to provide financial assistance, and did not assume any parental responsibility before receiving notice that the four-month-old baby was being placed for adoption. *Id.* at 2558. Here, by contrast, Lawrence asked twice about whether Appleton was pregnant, and offered to provide whatever financial and emotional support he could, but Appleton falsely replied that she was not pregnant, never told him that she had given birth, and surrendered the infant under the ISHA. This is a far cry from what happened in *Adoptive Couple*.

It bears emphasis that *Adoptive Couple* was a 5–4 decision and that Justice Breyer, whose vote was crucial to the outcome, underscored the limits of the holding. He explained that the case did not "involve special circumstances such as a father who was deceived about the existence of the child" — precisely what happened here — and noted that *Adoptive Couple* did not resolve whether ICWA applied in such circumstances. *Id.* at 2571 (Breyer, J., concurring). There is no reason to construe ICWA as narrowly as Appleton suggests. In the circumstances of this case, ICWA's requirements apply.

Second, Appleton argues that, if ICWA does apply to this case, the statutory preference for placing Indian children in Indian households is an unconstitutional racial classification. But this argument founders on *Morton v. Mancari*, 417 U.S. 535 (1974). In *Mancari*, a unanimous Supreme Court upheld an employment preference for Indians, explaining that "this preference [did] not constitute 'racial discrimination' [and was] not even a 'racial' preference." *Id.* at 553. In a footnote,

the Court explained that the preference applied only to members of federally recognized tribes and thus was "political rather than racial in nature." *Id.* at n.24.[4]

Because the *Mancari* preference was not race-based, the Supreme Court applied a deferential standard of review. That preference could be "tied rationally to the fulfillment of Congress' unique obligation toward the Indians," so it could be upheld as "reasonable and rationally designed to further Indian self-government." *Id.* at 555.

The ICWA preference is functionally identical to the preference at issue in *Mancari*. Just as the employment preference there applied only to members of federally recognized tribes, the ICWA applies only to federally recognized tribes. 25 U.S.C. § 1903(8). Congress explicitly found that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them" and that "an alarmingly high percentage of such children are placed in non-Indian foster homes and adoptive home and institutions." 25 U.S.C. § 1901(4). Accordingly, ICWA can also be rationally tied to the nation's unique obligation to Indians and as reasonably and rationally designed to benefit Indian self-determination.

Moreover, *Mancari* remains good law. The Supreme Court has relied on that precedent in other cases upholding legislation designed to benefit Indians. *See, e.g., Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 673 n.20 (1979) (tribal fishing rights); *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463, 479–80 (1976) (immunity from state taxes); *Fisher v. District Court*, 424 U.S. 382, 390–91 (1976) (per curiam) (tribal court jurisdiction).

Accordingly, the ICWA preference does not represent an unconstitutional racial preference.

CONCLUSION

In short, this court has jurisdiction over the case, ICWA applies to the circumstances of this case, and the ICWA preference is constitutional. For these reasons, Appleton's motion to dismiss is *denied*, Lawrence's motion for summary judgment is *granted*, and Appleton's motion for summary judgment is *denied*.

It is so ordered.

[4] Later in the opinion, the Court added that the preference was "granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities." *Id.* at 554.

UNITED STATES COURT OF APPEALS
FOR THE FIFTEENTH CIRCUIT

SAMUEL LAWRENCE, Plaintiff-Appellee v. ADA APPLETON, Defendant-Appellant	District Court Case No. 16-cv-05635

Before: ALPHA, BETA, and GAMMA, Circuit Judges

PER CURIAM.

The judgment of the United States District Court for the District of Mind is reversed.

This case presents two issues: (1) Did the district court have subject-matter jurisdiction? (2) Is the ICWA preference an unconstitutional racial preference?[*]

Judges ALPHA and GAMMA conclude that the district court had subject-matter jurisdiction. Judge BETA concludes that the district did not have subject-matter jurisdiction.

Judge ALPHA concludes that the ICWA preference is an unconstitutional racial preference and votes to reverse on this ground only.

Judge BETA concludes that the district court lacked subject-matter jurisdiction and votes to reverse on this ground only.

Judge GAMMA concludes that the ICWA preference is not an unconstitutional racial preference and would affirm the district court's judgment in all respects.

All members of the panel have written separate opinions explaining their reasoning.

It is so ordered.

ALPHA, Circuit Judge, *concurring in the judgment*.

The district court had subject-matter jurisdiction and therefore properly denied Appleton's motion to dismiss. But the ICWA preference is an unconstitutional racial preference, so the district

[*] In the district court, Appleton argued that ICWA did not apply in this case on the basis of *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013). The district court rejected that argument because this case, unlike *Adoptive Couple*, involved a situation in which the biological father "was deceived about the existence of the child." *Id.* at 2571 (Breyer, J., concurring). Appleton has not raised that argument on appeal, so this this court does not consider that forfeited argument.

court should have granted her motion for summary judgment and denied Lawrence's motion for summary judgment.

To begin with, the district court read *Morton v. Mancari*, 417 U.S. 535 (1974), too broadly. The Supreme Court emphasized that the case dealt only with a preference maintained by the Bureau of Indian Affairs, an agency that was "truly *sui generis*." *Id.* at 554. Moreover, the BIA preference sought "to make the [agency] more responsive to the needs of its constituent groups." *Id.*

Although Congress has broad discretion in legislating with respect to Indian affairs, that discretion is hardly unfettered. Congressional power under the Commerce Clause is limited by judicially enforceable rules, *see, e.g., United States v. Lopez*, 514 U.S. 549 (1995), even when legislative action also has an equal-protection aspect, *see, e.g., United States v. Morrison*, 529 U.S. 598 (2000). At least two subsequent cases suggest that we should read *Mancari* more cautiously than the district court did.

First, *Rice v. Cayetano*, 528 U.S. 495 (2000), suggests that some Indian preferences could be viewed as race-based. That case dealt with the mechanism for selecting trustees of the Office of Hawaiian Affairs, which was established to improve the conditions of descendants of persons who were living in Hawaii before Captain James Cook reached the islands in 1778. State law limited the right to vote for OHA trustees to descendants of pre-1778 inhabitants. *Id.* at 508–10. Although voting qualifications were defined by ancestry, the Supreme Court concluded that ancestry was an impermissible proxy for race. *Id.* at 514–15. To be sure, the Court observed that the status of descendants of pre-1778 Hawaiians might differ in legally relevant respects from the status of Indian tribes, *id.* at 518, but this is not the only case suggesting that some Indian preferences might raise constitutional concerns.

Second, and of special importance, *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013), strongly implies that the ICWA preference at issue in this case might be impermissibly race-based. The very first sentence of the majority opinion emphasizes the child's minimal quantum of Indian blood (3/256 or 1.2%). *Id.* at 2556. And the first sentence of the analysis also refers to that fact, emphasizing that if the child in question did not have even that small trace of Indian ancestry the biological father would have had no basis for challenging her adoption. *Id.* at 2559. The emphasis on this fact implies that the Court viewed the ICWA preference as race-based and therefore narrowly construed the scope of ICWA as an exercise in constitutional avoidance. *See id.* at 2584 (Sotomayor, J., dissenting).[+]

We cannot avoid confronting this question in the present case.[++] As Justice Breyer correctly observed in *Adoptive Couple*, a narrow construction of ICWA is problematic in a case like this where the biological father "was deceived about the existence of the child." *Id.* at 2571 (Breyer,

[+] Justice Thomas explicitly emphasized constitutional avoidance as the basis for a narrow interpretation, but he made clear his concern that ICWA as a whole was not justified under the Indian Commerce Clause. *Id.* at 2565, 2566–71 (Thomas, J., concurring). No other justice endorsed this analysis, and no party has made such an argument in this case.

[++] Some state courts addressing equal protection have found the ICWA preference to be unconstitutional as applied. *See In re Santos Y.*, 112 Cal. Rptr. 2d 692, 727–31 (Ct. App. 2001); *In re Bridget R.*, 49 Cal. Rptr. 2d 509, 527–28 (Ct. App. 1996).

J., concurring). In short, the constitutional issue is squarely presented here. The post-*Mancari* developments suggest that Indian preferences outside the narrow context of the "*sui generis*" Bureau of Indian Affairs require a different legal analysis. ICWA does not deal with the relationship between tribes and an agency that seeks to promote tribal self-government. Instead, ICWA embodies a race-based preference. As in *Rice*, the preference might be couched in terms of ancestry, but absent the political relationship that existed in *Mancari*, we see that ancestry is an impermissible proxy for race.

The Supreme Court has instructed that all race-based classifications are subject to strict scrutiny. *See, e.g.*, *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 223–24, 227 (1995). This is so even if the government invokes a benign purpose for relying on race. *Id.* at 226. And race is especially problematic in resolving disputes over child custody. *Palmore v. Sidoti*, 466 U.S. 429, 433–34 (1984). Thus, ICWA's reliance on a proxy for race raises significant equal-protection concerns. At a minimum, it could discourage adoption of anyone who might qualify as an Indian child, which cannot be in the best interest of children who would be left without a stable and loving environment in which to grow up. *See Adoptive Couple*, 133 S. Ct. at 2565.

The district court erred in granting Lawrence's motion for summary judgment. I would reverse the district court, which should have granted Appleton's motion for summary judgment.

BETA, Circuit Judge, *concurring in the judgment*.

I agree with Judge ALPHA that the district court's judgment must be reversed, but I reach that conclusion by a different path. In my view, the federal courts lack jurisdiction over this case because it involves child custody. The Supreme Court has so held on numerous occasions, and we should apply those holdings here. Because I would reverse on jurisdictional grounds, I have no occasion to address ICWA's constitutionality.

The leading modern case on the domestic-relations exception to federal jurisdiction is *Ankenbrandt v. Richards*, 504 U.S. 689 (1992). The Supreme Court held that this exception encompassed cases involving divorce, alimony, and child custody. *Id.* at 704. Although *Ankenbrandt* was a diversity case, *id.* at 691, it hardly follows that the domestic-relations exception applies only in such cases. In fact, *In re Burrus*, 136 U.S. 586 (1890), was a federal-question case. *See id.* at 587–88; *see also Ankenbrandt*, 504 U.S. at 703.

Indeed, the Court invoked the domestic-relations exception in a recent federal-question case. The lead opinion in *Elk Grove Unified School District v. Newdow*, 542 U.S. 1 (2004), said that, "in general, it is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts." *Id.* at 13. This generalization appeared in the midst of a discussion of prudential standing and has afforded a measure of support to lower courts that have applied the domestic-relations exception in federal-question cases. As the *Newdow* Court explained, lower courts in federal-question cases involving domestic relations should take on such cases only in the "rare instances . . . in which it is necessary to answer a substantial federal question that transcends or exists apart from the family law issue." *Id.*

And while *Marshall v. Marshall*, 547 U.S. 293 (2006), might have narrowed the probate exception, as the district court pointed out, that ruling did not resolve all of the jurisdictional issues in that case. Following the remand from that decision, the Supreme Court again addressed jurisdictional issues and concluded that the federal bankruptcy court lacked authority to enter final judgment awarding more than $425 million in compensatory and punitive damages for a common-law tort counterclaim. *Stern v. Marshall*, 564 U.S. 462, 469, 503 (2011).

The district court in this case incorrectly concluded that lower courts have applied the domestic-relations exception only in diversity cases. But several circuits, including some that the district court cited, have held that the domestic-relations exception can apply even in federal-question cases. *See, e.g.*, *Allen v. Allen*, 48 F.3d 259, 262 & n.3 (7th Cir. 1995); *Hemon v. Office of Public Guardian*, 878 F.2d 13, 15 (1st Cir. 1989) (per curiam); *Magaziner v. Montemuro*, 468 F.2d 782, 787–88 (3d Cir. 1972). As Judge Posner explained, "[t]here is no good reason to strain to give a different meaning to the identical language in the diversity and federal-question statutes." *Jones v. Brennan*, 465 F.3d 304, 307 (7th Cir. 2006).

The rationale for the domestic-relations exception is equally persuasive regardless of the basis for invoking federal jurisdiction. This case is especially ill-suited for the federal courts because the adoption at issue was handled in the courts of the State of Mind. To the extent that Lawrence is entitled to relief, he should pursue his remedy in that forum.

GAMMA, Circuit Judge, *dissenting*.

The district court was correct in its resolution of the issues in this case. I would affirm its judgment.

Let me begin with a few brief comments about jurisdiction. As to *Newdow*, the Supreme Court expressly disclaimed reliance on the domestic-relations exception to federal-question jurisdiction. *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 13 n.5 (2004).

As to the long-running Anna Nicole Smith litigation, the ruling in *Stern v. Marshall*, 564 U.S. 462 (2011), dealt only with the constitutional authority of the bankruptcy court and not with the scope of the so-called probate exception to federal jurisdiction that the Supreme Court had narrowed in *Marshall v. Marshall*, 547 U.S. 293 (2006).

And as to the internal inconsistency of some circuits and the disagreement between circuits with regard to the existence of a domestic-relations exception in federal-question cases, this circuit has never addressed the issue and therefore this panel is not bound by any of those conflicting rulings. We should adopt the rule that seems to us most persuasive. I agree with Judge ALPHA that the district court adopted the proper approach to jurisdiction in this case.

I also believe that the district court properly concluded that the ICWA preference is not an impermissible racial preference and that it should be assessed under the deferential approach of *Morton v. Mancari*, 417 U.S. 535 (1975). But even if ICWA embodies a race-based preference, that preference passes muster under the standard of strict scrutiny.

As to the continuing vitality of *Mancari*, nothing in *Rice v. Cayetano*, 528 U.S. 495 (2000), calls that precedent into question. *Rice* went out of its way to explain the special status of Indian tribes in American law and to explain the basis for the holding in *Mancari*. *See id.* at 519–20. *Rice* also cited with apparent approval a series of subsequent decisions that relied on *Mancari*. *Id.* at 519. Similarly, isolated statements in *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013), do not justify the conclusion that *Mancari* has lost its authority. At most, those statements imply that some members of the Supreme Court disagree with the *Mancari* approach. They hardly represent a repudiation of that approach.

The Supreme Court repeatedly has warned lower courts to follow its precedents even if the continuing vitality of those precedents is uncertain. Only the Supreme Court has the authority to overrule its precedents. *See, e.g.*, *Bosse v. Oklahoma*, 137 S. Ct. 1 (2016) (per curiam); *Tenet v. Doe*, 544 U.S. 1, 10–11 (2005); *Rodriguez de Quijas v. Shearson/American Express*, 490 U.S. 477, 484 (1989). The Supreme Court has not overruled *Mancari*, so that precedent marks the path that we should follow in assessing the constitutionality of the ICWA preference.

Assuming, but not deciding, that ICWA embodies a racial preference, Congress had a compelling interest in protecting Indian children and families from exploitation, and the preference is narrowly tailored to promote that interest. Congress compiled a voluminous record confirming the deleterious impact on Indian children, families, and tribes of abusive policies and practices that placed large numbers of children in non-Indian foster care, adoptions, and institutions. *See Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 32–36 (1989).

That record is reflected in numerous hearings and committee reports, as well as in congressional findings embodied in the statute. *See, e.g.*, H.R. Rep. No. 95–1386, at 9–12 (1978); S. Rep. No. 95–597, at 11–13 (1977); *Indian Child Welfare Program: Hearings before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs*, 93d Cong., 2d Sess. (1974); *Hearing on S. 1214 before the Subcommittee on Indian Affairs and Public Lands of the House Committee on Interior and Insular Affairs*, 95th Cong., 2d Sess. (1978); *Hearing on S. 1214 before the Senate Select Committee on Indian Affairs*, 95th Cong., 1st Sess. (1977); *see also* 25 U.S.C. § 1901 (congressional findings); 25 U.S.C. § 1902 (congressional declaration of policy). The preference, policies, and procedures embodied in ICWA were written to address directly the problems that Congress identified. This is sufficient for ICWA to survive strict scrutiny.

SUPREME COURT OF THE UNITED STATES

SAMUEL LAWRENCE v. ADA APPLETON

The petition for a writ of certiorari is granted, limited to the following questions:

1) Did the district court have subject-matter jurisdiction over this case?

2) Is the Indian Child Welfare Act's preference for placement of Indian children in Indian foster care, adoptive homes, and other settings consistent with the constitutional guarantee of equal protection?