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Dear Tribal Leader,

On June 25, 2013, the United States Supreme Court decided the case *Adoptive Couple v. Baby Girl* (known in the media as the “The Baby Veronica Case”). **This decision did not overturn the Indian Child Welfare Act of 1978 (ICWA). ICWA still remains law and should still apply to private adoptions and child welfare cases nationwide.** It is true, however, that in spite of a coordinated, concerted effort on the part of Indian Country, the Court decided against Dusten Brown and the Cherokee Nation. It set into motion a series of actions in South Carolina and Oklahoma courts that ended with Veronica being placed with a non-Native couple. This occurred because the decision placed limits on ICWA’s requirements for *unwed fathers without custody* when their children are voluntarily placed for adoption and changed how ICWA’s placement preferences are applied in voluntary adoptions.

As this case made its way to the Supreme Court, NICWA, the National Congress of American Indians, the Native American Rights Fund, and Association on American Indian Affairs (AAIA) worked closely to ensure Indian Country’s voice was present in the courtroom. Thanks to the hard work of tribal leaders like you, 24 amicus briefs were filed on in support of Dusten Brown and the Cherokee Nation. In an unprecedented effort, 393 tribes signed onto 10 different briefs describing the impact this case would have on tribal rights and Native families. Briefs were filed on behalf of 19 different state Attorneys General, numerous members of Congress, and the United States of America—all thanks to tribal leaders reaching out to their contacts and reminding these different governmental entities of the importance of ICWA to the future of tribes. Because of these incredibly coordinated efforts, ICWA remains law today. We have heard from legal experts that such a unified outpouring of support played an integral role in our opposition’s decision to abandon their original strategy to overturn ICWA entirely.

Unfortunately, in its 5-4 decision, the Court did narrow the interpretation of certain sections of ICWA. The decision found specifically that:

- In private adoptions, the requirement that active efforts be made to prevent the breakup of Indian families and the requirement that increased protection be provided for parents of Indian children in a termination of parental rights proceeding **do not apply to a father when he does not have custody of the child placed for adoption**. The rest of the protections of ICWA still apply in these cases, and the rest of the rights that fathers have under ICWA still apply in these cases.
- ICWA’s adoptive placement preferences (in order: member of the child’s family, member of the child’s tribe, and another AI/AN family) **only apply when there are “competing” adoptive families**. Stated differently, the decision found that if a family that fits ICWA’s adoptive placement preferences does not formally seek to adopt an Indian child *prior to or during the adoption proceedings*, another couple, who does not fit the preferences, such as a non-Indian family that is not a relative, may be able to adopt the Indian child.

In response, NICWA and partners have ramped up their efforts to educate Indian Country and state and private agencies and attorneys about ICWA and the impacts of this decision. NICWA and AAIA have written *A Practical Guide to the Decision* which can be found on NICWA’s website and provides detailed information on the possible implications of the Supreme Court’s ruling and analysis of its effect on state ICWA laws and tribal-state agreement. **The document provides**

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several recommendations on how to minimize the negative effects of this Supreme Court decision as new ICWA cases proceed through the courts and interpret the *Adoptive Couple v. Baby Girl* decision.

Please share this attached document with your ICW program, tribal judges, and tribal attorneys and encourage them to: 1) review your tribe's children's code and consider how it can be strengthened to better to protect fathers and family members; 2) to review current state law and tribal-state agreements to see if they adequately protect unwed fathers rights and require a diligent search for family and tribal adoptive placements; and 3) reach out to your state Attorney General's office and state child welfare agency to help them interpret the decision in a way that respects tribal sovereignty and fathers' rights.

We understand how important it is that tribal governments and community members understand this decision and the potential consequences it may have. NICWA is working hard to educate the public. As a tribal leader, you can help by sharing the following information with your community:

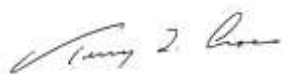
- **ICWA is still law and ICWA should be followed** any time a child who is a member—or is eligible for membership and has a parent who is a member—is being removed from their home by the state or is being placed for adoption by a private agency.
- The Baby Veronica decision **should not be applied in dependency cases** (state child welfare cases where the actions are involuntary or without the parents' consent typically); if this decision is being applied in a dependency case, it is important to seek immediate legal assistance.
- Because of the case, Native fathers must establish legal and/or physical custody (as well as paternity) of their children *immediately* after their child's birth or they may not be protected by ICWA when the mother seeks to place the child up for adoption. This can be done by filing paper work either in tribal or state court. ***This is an area where state law can be changed to better protect birth fathers.***
- Now more than ever, Native families need to come forward and work with tribal, state, and private agencies to foster and adopt Native children. In turn, ICW programs and tribal attorneys must work with private adoption agencies to ensure that Native families seeking to adopt file adoption paperwork immediately after an Indian child being placed for adoption is born. ***This is an area where state adoption policy can be changed to better protect Native families.***

NICWA was gravely disappointed in the Court's ruling against Dusten Brown and the Cherokee Nation but shares Indian Country's relief that the decision left the vast majority of ICWA requirements intact. NICWA is now doing everything we can to examine the possible impacts of this decision and develop a tribally-led long-term strategy. The key to any long-term strategy is providing meaningful information and resources to every agency involved in placing Indian children, members of Congress, policymakers, stakeholders, and most importantly throughout Indian Country. We ask you to join us in this mission by sharing this letter and the information it contains with your communities, fellow tribal leaders, social service directors, tribal court judges, and attorneys.

In the wake of this case, NICWA is redoubling our efforts to improve ICWA compliance and prevent another Baby Veronica case. We understand these are very complex issues. **Our technical assistance team is available to come to your community and walk your ICW staff and tribal council through the decision, its implications for your children, and our recommendations on how to best protect your families going forward.**

We are committed ensuring that a heartbreaking case like this never happens again. We thank you for your support and for continuing to make the well-being of Native children a priority.

Sincerely,



Terry L. Cross
Executive Director
National Indian Child Welfare Association