



# WHITE MOUNTAIN APACHE TRIBE

*A Sovereign Nation Exercising Self-Governance  
Over the Fort Apache Indian Reservation*

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## **Resolution No. 01-2013-32**

**( Approving Submission of an Amicus Curiae Brief to the U.S. Supreme Court on the case of *Adoptive Couple v. Baby Girl, Birth Father and the Cherokee Nation* (No. 12-399), known as the “Baby Veronica” case )**

**WHEREAS**, the Inter Tribal Council of Arizona, Inc. (ITCA), an organization of 20 Tribal governments in Arizona, provides the means for action on matters that affect a Tribe individually or collectively, and responds to the needs of its tribal membership, including the Indian Child Welfare Act (“ICWA”) of 1978 (25 U.S.C. 1901-1963); and

**WHEREAS**, the member Tribes of the ITCA have the authority to act to further their collective interests as sovereign Tribal governments; and,

**WHEREAS**, the U.S. Supreme Court recently announced it would review the high-profile case of *Adoptive Couple v. Baby Girl, Birth Father and the Cherokee Nation* (No. 12-399), known as the “Baby Veronica” case, which arises from and involves the federal Indian Child Welfare Act ; and

**WHEREAS**, for Petitioners, the non-Indian adoptive couple, the issues are:

1. Whether the ICWA governs state proceedings to determine the custody of a minor who all parties concede to be an “Indian child” within the meaning of the Act;
2. Whether a father who satisfies state-law requirements to establish paternity qualifies as a “parent” under ICWA; and

**WHEREAS**, for Respondents, the biological father, a member of the Cherokee Nation and his tribe:

1. Whether the ICWA is applicable to adoption proceedings, voluntarily initiated by the mother, involving a non-custodial father (or whether the EIFE applies in these circumstances);
2. Whether state law should define the definition of “parent” under ICWA; and

**WHEREAS**, Petitioners rely on the existing Indian family doctrine, a judicial argument that ICWA does not apply when an unmarried non-Indian mother surrenders custody of an Indian child who is not currently living with an Indian family; and

**WHEREAS**, the majority of jurisdictions have rejected the doctrine, including the State of Arizona, but more importantly it is inapplicable because the Father “is a Cherokee in more than name only, and there is, in fact an existing Indian family . . . [and that Father] has a strong cultural tie to the Cherokee Nation,” and Father meets the ICWA’s definition of “parent” because he had acknowledged paternity and paternity was established through DNA testing; and

**WHEREAS**, the Tribe has a substantial number of ICWA cases, not just in Arizona, and Petitioner's position in the Baby Veronica case may have a substantially negative impact on the ability of the Tribe to assert jurisdiction over such cases; and

**WHEREAS**, the Tribal Council finds that this matter should be brought to the attention of the Inter Tribal Council of Arizona for purposes of filing an amicus curiae brief on behalf of its member tribes.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that:

1. The Tribe supports the position of the biological father and his Tribe, the Cherokee Nation, and given the potential negative impact of this case on tribal jurisdiction, an amicus curiae brief should be filed by the ITCA on behalf of its member tribes.
2. The Social Services Department, and any Tribal officials working on ICWA cases are hereby directed to provide the ITCA with data and positions relevant to the Baby Veronica case, including, but not limited to: the number of ICWA cases processed, including the number in which the Tribe moved the state court to transfer jurisdiction to tribal court; the number and general description of any cases that the Tribe encountered a fact pattern similar to the existing Indian family exception.
3. The Tribe's Attorney General is hereby directed to provide assistance to the ITCA, including the drafting of an amicus curiae brief to the U.S. Supreme Court that suitably describes the Tribe's position against Petitioners.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, this Resolution shall be declared null and void and have no legal effect.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Acting Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution. In the event that the Chairman fails to delegate signatory authority to an Acting Chairman, the Vice-Chairman may sign.

The foregoing resolution was on JANUARY 30, 2013 duly adopted by a vote of SEVEN for and ZERO against and ZERO abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (s), (t) and (u) of the Tribal Constitution, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
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Ronnie Lupton, Chairman

2-7-13  
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Date

  
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Mariddie J. Craig, Secretary

02/07/2013  
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Date