HAYNES, *Circuit Judge*, concurring:

I concur with portions of both JUDGE DENNIS's and JUDGE DUNCAN's Opinions (respectively, the "Dennis Opinion" and the "Duncan Opinion").[1] On standing, I concur with the conclusions of Part I of the Duncan Opinion that Plaintiffs have standing to bring all their claims.[2]

On the equal protection issues, I concur in part with Part II(B)(2) of the Dennis Opinion that the definition of "Indian child" does not violate the Equal Protection Clause. As to the placement preferences, I conclude that the first two prongs of ICWA § 1915(a)—concerning the members of the child's extended family and tribe—withstand even strict scrutiny, so I concur with Part II(B)(2) of the Dennis Opinion that they are constitutional; but I concur with Part III(A)(3) of the Duncan Opinion that the "other Indian families" prong of ICWA § 1915(a) violates the Equal Protection Clause because it fails to be rationally tied to fulfilling Congress's goals of protecting Indian tribes.

On the anti-commandeering/preemption issues, I concur with the conclusion in Part II(A)(1) of the Dennis Opinion that Congress had plenary authority under the Indian Commerce Clause to enact ICWA, but I concur with Parts III(B)(1)(a)(i) and III(B)(1)(a)(iv) and in part with Parts III(B)(1)(a)(ii), III(B)(1)(b), and III(B)(2)(b) of the Duncan Opinion that ICWA §§ 1912(d), (e) and 1915(e) violate the anti-commandeering doctrine and are invalid preemption provisions. With respect to the remaining

[1] All references to the Dennis Opinion and Duncan Opinion are to the enumerated sections under the "Discussion" portion of each opinion.

[2] In that regard, I also agree with the conclusions of Parts I(A)(2)–(D) of the Dennis Opinion.

statutory provisions at issue, I concur with the Dennis Opinion that they do not violate the anti-commandeering doctrine and validly preempt state law.

On the nondelegation doctrine issue, I concur with Part II(C) of the Dennis Opinion that ICWA § 1915(c) does not violate that doctrine.

Lastly, on the Administrative Procedure Act issues, I concur with Part III(D)(1) of the Duncan Opinion that the Final Rule is invalid to the extent that it implements the unconstitutional statutory provisions identified above: ICWA §§ 1912 (d), (e), and 1915(e) and the "other Indian families" prong of ICWA § 1915(a). However, to the extent that the Final Rule implements constitutional ICWA provisions, I concur with Part II(D)(1) of the Dennis Opinion that those portions of the Final Rule are valid. I also concur with Part II(D)(2) of the Dennis Opinion that BIA did not exceed its authority in making the Final Rule binding. But I concur with Part III(D)(3) of the Duncan Opinion that the "good cause" standard in 25 C.F.R. § 23.132(b) fails at *Chevron* step one.