No. 20-1104

IN THE

Supreme Court of the United States

SPRING TERM 2021

MAUMEE INDIAN NATION,

Petitioner,

v.

WENDAT BAND OF HURON INDIANS,

Respondent.

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE THIRTEENTH CIRCUIT

No. 15-0113

Brief for Respondent

T1010

Oral Argument Requested

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QUESTIONS PRESENTED

I. Whether the Thirteenth Circuit was correct in holding that, under McGirt v. Oklahoma, the original treaty rights and original reservations given to the Maumee and Wendat tribes retain the original statuses granted by the United States Congress?

II. Whether the Thirteenth Circuit was correct in holding that either the doctrine of Indian preemption or infringement prevent the State of New Dakota from collecting its Transaction Privilege Tax against a Wendat tribal corporation located on an Indian reservation?

STATEMENT OF THE CASE

STATEMENT OF THE PROCEEDINGS

On November 18, 2015, the Maumee Indian Nation (hereafter 'Maumee Nation') filed a complaint against the Wendat Band of Huron Indians (hereafter 'Wendat Band') in the United States District Court for the District of New Dakota. R. at 8. The United States District Court for the District of New Dakota issued a Declaration that Topanga Cession was within the boundaries of the Maumee Reservation and that any commercial enterprise that is owned by the Wendat Commercial Development Corporation (hereafter 'WCDC') and receives more than $5,000 in gross sales must obtain the Transaction Privilege Tax and pay the tax to the State of New Dakota. *Id*. at 9. Additionally, the tax paid to New Dakota would then be remitted in part to the Maumee Indian Nation. *Id.*

On September 20, 2018, the Wendat Band submitted an appeal on the matter to the United States Court of Appeals for the Thirteenth Circuit. *Id*. at 10. The case was held in anticipation of the United States Supreme Court holding in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). *Id*. On July 9, 2020, the U.S. Supreme Court issued their holding on *McGirt*. *Id*. Soon after, the parties in this case were invited to submit supplemental briefs. *Id*. On September 11, 2020, the Thirteenth Circuit Court of Appeals held that the Treaty with the Wendat of 1859 abrogated the Maumee Nation's claim to the land in the Topanga Cession. *Id*. Furthermore, it was held that the Wendat Allotment Act, P.L. 52-8222 (Jan. 14, 1892), did not diminish the Wendat Reservation; therefore, the Topanga Cession is located within the boundaries of the Wendat Reservation. *Id*. As such, both the Wendat Band and the WCDC are not required to obtain a TPT license and paying the tax to New Dakota would

infringe on tribal sovereignty due to the precedent of Indian preemption. *Id*. at 11. For these reasons, the Thirteenth Circuit Court of Appeals reversed the District Court's decision. *Id*.

The Maumee Nation then petitioned for Wirt of Certiorari, which was granted by the U.S. Supreme Court on November 6, 2020. *Id*. at 1.

STATEMENT OF THE FACTS

The Maumee Nation and the Wendat Band are both culturally distinct federally recognized tribes whose traditional lands overlap and have since been incorporated into the state of New Dakota. R. at 4. Currently, both tribes share a border, which has been distinguished as the Wapakoneta River by the Treaty of Wauseon and the Treaty with the Wendat. *Id*. at 4 and 5.

On October 4, 1801, the Commissioners Plenipotentiary of the United States and the Maumee Indians signed the Treaty of Wauseon, which was ratified by Congress without Amendment on February 8, 1802. Treaty of Wauseon, Oct. 4, 1801, 7 Stat. 1404. The Treaty of Wauseon defined the boundaries of the Maumee Reservation in Article III, which designates the border in conflict as the western bank of the Wapakoneta River. *Id*.

On March 26, 1859, the United States and the Chiefs, Headmen, and Warriors of the Wendat Band signed the Treaty with the Wendat. Treaty with the Wendat, March 26, 1859, 35 Stat. 7749. By signing this treaty, the Wendat Band agreed to the dissolution of their title and interests to lands in the territory of New Dakota would be terminated, excluding the lands east of the Wapakoneta River. *Id*. As a result of the cession in Article I of the treaty, two reservations were created, one of which includes land in Door Prairie County. *Id*. The full text of both treaties has been reproduced following this brief in Appendix 1.

In 1887, Congress made the decision to focus on the assimilation of Indians by passing the General Allotment Act, P.L. 49-1105 (Feb. 8, 1887). As a result of the passing of General Allotment Act, Congress approved the Wendat Allotment Act on January 14, 1892, and the Maumee Allotment Act on May 29, 1908. R. at 9. Both tribes have used the boundary lines indicated in the treaties to maintain the exclusive rights to their respective reservations since at least 1937. *Id*. at 5. However, sometime during the 1930s, the Wapakoneta River shifted approximately 3 miles west, which has resulted in lands that were once west of the river in 1802 to be located east of the river in 1859. *Id*. Both tribes refer to this land as the "Topanga Cession." *Id*. Additionally, water law and the process in which the river moved is not at issue in this case. *Id*.

The full text of the respective treaties and allotment acts has been reproduced in appendices following this brief (Appendices 1 & 3) in addition to the relevant legislative documents regarding the enactments of the treaties, allotment acts, and census records (Appendices 2, 4, 5).

On December 7, 2013, the Wendat Tribe purchased land located within the Topanga Cession. R. at 7. Two years later, on June 6, 2015, the Wendat Tribe announced it would construct a residential/commercial building on the land. *Id.* This development would provide public housing for low-income Wendat tribal members, nursing facility for Wendat tribal elders, a Wendat tribal cultural center, a Wendat tribal museum, and a shopping center owned by the Wendat Commercial Development Corporation. *Id.* Additionally, this complex would include a café that would offer traditional Wendat cuisine, a grocery store offering both fresh and traditional foods, a salon/spa, a bookstore, and a pharmacy. R. at 8. Moreover,

this complex would provide for 350 jobs and earn more than $80 million in sales annually. *Id.*

On November 4, 2015, the Maumee Nation met with the Wendat Tribal Council and informed Wendat that the Topanga Cession is Maumee's land. *Id.* Maumee Nation further informed Wendat that there would be a 3.0% Transaction Privilege Tax that would be remitted back to the Maumee Nation since the complex would be a non-member business operating on Maumee lands. *Id.*

SUMMARY OF ARGUMENT

The first issue before the Court's consideration requires this Court to find that at no time did Congress explicitly intend for the reservation boundaries of the Wendat Band to be diminished; whereas, the explicit and clear language in the Maumee Allotment Act, as well as the respective legislative documents, demonstrate an agreement between the Maumee Nation and the United States, which results in the diminishment of the Maumee Reservation. This Court cannot rewrite history nor can it overrule the power given to Congress as the guardian of Indians, which leaves the only option of holding in favor of Congress's explicit and clear intent to preserve the boundaries of the Wendat Reservation as stated in the Treaty with the Wendat.

The second issue before the Court's consideration requires this Court to find that the exercise of state authority may be preempted by federal law or may infringe on the right of Indian tribes on their reservation to make and be governed by their own laws. Specifically, the State of New Dakota is preempted by federal law and cannot exercise its authority over the Wendat tribe and impose a Transaction Privilege Tax over a Wendat owned corporation on the Wendat reservation. Further, the State of New Dakota cannot infringe on the right of the Wendat tribe to make and be governed by its own laws by imposing a Transaction Privilege Tax on a Wendat corporation located on Indian country.

ARGUMENT

I. AFTER CLOSE CONSIDERATION OF THE THREE MEANS OF ASSESSING THE STATUS OF A RESERVATION, IT SHOULD BE HELD THAT CONGRESS FULLY INTENDED FOR THE MAUMEE ALLOTMENT ACT TO DIMINISH THE MAUMEE RESERVATION AND THAT THE WENDAT ALLOTMENT ACT PRESERVES THE ORIGINAL RESERVATION BOUNDARIES AS SET FORTH IN THE TREATY WITH THE WENDAT

The U.S. Supreme Court has explicitly stated numerous times that the diminishment of Indian reservations "will not be lightly inferred." *Solem v. Barlett*, 465 U.S. 463, 470 (1984). In order to preserve the integrity of treaties between tribes and the United States, the Supreme Court has repeatedly held that Congress has the plenary authority over tribal relations as granted by the Constitution of the United States. *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565 (1903). Furthermore, the guardianship-ward relationship that the United States has with Indians grants Congress the paramount power, even if implied, over the property of Indians to act in the best interest of Indians, *id*., even if Congress's actions, in good faith, *id*. at 566, are the exact opposite of what is stated in treaties between the two, *id*. at 565.

As a result of the guardianship power that Congress wields, the courts do not have the power to go against the intentions of Congress. *Id*. To ensure the guardianship power resides with Congress, the Supreme Court has established three means of determining if Congress intended to diminish a reservation, which are as follows in order of most importance: the text of the act, and if ambiguous then legislative history may be considered; the manner in which

surplus lands were opened; and the preservation of the Indian character of the reservation, including the understanding of the status of the reservation amongst both Indian and non-Indians.

A. CONGRESS HAS CLEARLY DEMONSTRATED THE OBVIOUS INTENT TO DIMINISH THE MAUMEE RESERVATION IN BOTH THE LANGUAGE AND LEGISLATIVE HISTORY OF THE MAUMEE ALLOTMENT ACT BUT FAILED TO CLEARLY DEMONSTRATE THE EQUIVALENT IN THE WENDAT ALLOTMENT ACT

When determining whether the status of a reservation remains intact the Court can only look at the Acts of Congress to resolve the ambiguity in the language. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2462 (2020). If congress intends for the diminishment of a reservation, then the intent of diminishment must be expressed on the face of the act or be clearly demonstrated by the legislative history. *Mattz v. Arnett*, 412 U.S. 481, 505 (1973).

Treaties with tribes are referred to as the Supreme Law of the Land but these treaties are not untouchable. The power of Congress to abrogate treaties has not been doubted and that there rests the possibility that the future may require the unilateral decisions and actions of Congress, especially in instances that are consistent with "perfect good faith towards the Indians." *Lone Wolf*, 187 U.S. at 566. However, if Congress chooses to diminish a reservation then it is required to explicitly state that a reservation will not retain its status in full. *Solem*, 465 U.S. at 470. "The congressional intent must be clear, to overcome 'the general rule that [d]oubtful expressions are to be resolved in favor of the weak and

defenseless people who are wards of the nation, dependent upon its protection and good faith.'" *DeCoteau v. Dist. Cnty. Ct. for 10th Jud. Dist.*, 420 U.S. 425 (1975) (quoting *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164 at 174). Congress is fully aware of the explicit language that is required to diminish a reservation, *Mattz*, 412 U.S. at 504, and if Congress intends to "break the promise of a reservation, then it must say so," *McGirt*, 140 S. Ct. at 2462.

The only time Congress stated a clear and explicit intent to diminish a reservation can be seen in the legislative history of the Maumee Allotment Act, which not only shows the written agreement and contract to diminish the reservation in return for payment but also that Congress amended the agreement to which the Maumee Band gave their approval. R. at 25. The Maumee Nation agreed to allowing a portion of their reservation to revert to public domain, which "evidences a congressional intent with respect to those lands inconsistent with the continuation of reservation status." *Hagen v. Utah*, 510 U.S. 399 (1994). However, this consideration is the most authoritative evidence of the Wendat's relationship to the land lies within "the treaties and statutes that promised the land to the tribe in the first place." *Id*. at 2476. When looking at the Wendat Allotment Act, it is obvious that there is no clear and explicit language that shows Congress's intent to diminish the reservation. Instead, the Wendat Allotment Act states that it would open the reservation for settlement, which is not indicative of diminishment unless explicitly stated. Nor was there any evidence in the legislative history that indicated that the majority of Congress intended to diminish the Wendat Reservation.

B. OPENING SURPLUS LAND FOR SETTLEMENTS DOES NOT EQUATE THE TERMINATION OF RESERVATION STATUS IF THE STATUTE DOES NOT EXPLICITLY STATE THE CESSESION OF ALL TRIBAL INTERESTS AND TITLE IN THE LAND

The nonconformity of allotment acts has led to the need to distinguish the surplus lands that merely allow for non-Indians to purchase land that remains part of an established reservation from the surplus lands that diminish Indian reservations. *Solem v. Barlett*, 465 U.S. 463, 470 (1984). On June 25, 1948, Congress defined the phrase "Indian County" as "*all land within the limits of any reservation* under the jurisdiction" of the United States, "notwithstanding the issuance of *any* patent . . . [and] *all* dependent Indian communities within . . . the original or subsequently acquired territory thereof" as well as "*all* Indian allotments" whose titles have not been extinguished. 18 U.S.C.A. § 1151 (West 1948) (emphasis added). Additionally, it has long been established that once Congress has established a reservation then all of the land presiding within the boundaries set by Congress remain a part of the reservation until Congress deems otherwise. *United States v. Celestine*, 215 U.S. 278, 285 (1909). Additionally, only Congress can diminish the boundaries of or completely terminate Indian reservations. *Id*.

The Court has clearly stated time and again that the mere presence of allotment provisions cannot be interpreted that Congress intended for a reservation to be diminished. *Mattz v. Arnett* at 504. This was made clear by the holding of this Court in *Seymour v. Superintendent Wash.Penitentiary,* 368 U.S. 351, 356 (1962), which stated that the 1892 Act that opened the reservation "did no more than open the way for non-Indian settlers to own

land on the reservation in a manner which the Federal Government, acting as guardian and trustee for the Indians, regarded as beneficial to the development of its wards." However, the diminishment of a reservation can result from surplus land acts whose statutory language clearly shows the intent for tribal interests and title to be ceded thus returning the agreed upon land to the public domain, which strips the agreed upon land of its reservation status. *DeCoteau v. Dist. Cnty. Ct. for 10th Jud. Dist.*, 420 U.S. at 446.

The United States District Court for the District of New Dakota partially incorrect in its holding that both the Maumee and Wendat Reservations were diminished due to the sum of money given to the tribes by the United States. This Court has stated that "each tribe's treaties must be considered on their own terms." *McGuirt*, 140 S. Ct. at 2452. The District Court was correct in holding that the acceptance of the money by the Maumee Nation further proves Congress's intent to diminish the Maumee Reservation due to the explicit language and proven intent between the United States and the Maumee Tribe, which states that the Maumee Tribe would cede the total rights and title to portions of their reservation and allow the land to revert back into public domain in exchange for a fixed sum. R. at 24. However, the acceptance of money by the Wendat Band is not indicative of intent to diminish the Wendat Reservation because "fixed-sum provisions" do not "vitally distinguish" the surplus land acts from one another. *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 587 (1977). Instead, the lack of explicit language and legislative history clearly shows Congress's intent to preserve the status of the Wendat Reservation.

C. CONSIDERATION OF THE DEMOGRAPHIC HISTORY OF OPENED LANDS FAILS TO MEET THE EXPLICIT REQUIREMENTS NECESSARY TO SHOW THAT THE WENDAT RESERVATION HAS BEEN DIMINISHED

The demographic history of opened lands within reservations has long been considered the weakest determining factor when addressing whether a reservation has been diminished. In fact, "this Court has *never* relied solely on this third consideration to find diminishment" of a reservation. *Nebraska v. Parker*, 136 S. Ct. 1072, 1081 (2016) (emphasis added).

This consideration is the weakest argument to prove diminishment because every single surplus act that opened lands within a reservation's boundaries resulted in a surge of non-Indian residence that degrades the Indian characteristics of the reservation. *Id.* at 1082 (citing *Yankton Sioux*, 522 U.S. at 356).

The Maumee Nation's final argument relies on the consideration of the demographic history to prove the diminishment of the reservation due to the loss of its Indian characteristics. However, in 2016, this Court held that this consideration was not powerful enough to overturn the statutory language in order to prove that Congress intended to diminish the reservation, *Nebraska*, 136 S. Ct. at 1081-82, despite the fact that the Omaha Tribe has been almost entirely absent from the disputed land for more than 120 years in addition to the tribe's lack of governance on the disputed land. *Id.* at 1081. In fact, the number of Indians residing on the contested Topanga Cession exceeds that of the Indians

residing on the opened land of the Omaha Reservation. According to the 2010 Census Data, 17.9% of those residing on the Topanga Cession were Indians, R. at 7, which is an astonishing amount compared to less than 2% of those residing on the Omaha Reservation were Indians, *Nebraska*, 136 S. Ct. at 1078. Despite the low number of Indian residents on the Topanga Cession, the Wendat Reservation retains its reservation status because the demographic history "cannot overcome the statutory text, which is devoid of any language indicative of Congress; intent to diminish." *Id*. at 1082 (quoting *Yankton Sioux Tribe*, 522 U.S. 329, 356 (1998).

II. THE DOCTRINE OF INDIAN PREEMPTION AND THE DOCTRINE OF INFRINGEMENT BOTH PREVENT THE STATE OF NEW DAKOTA FROM COLLECTING ITS TRANSACTION PRIVILEGE TAX AGAINST A WENDAT TRIBAL CORPORATION ON THE WENDAT INDIAN RESERVATION; HOWEVER, THE PRESENCE OF BOTH IS NOT REQUIRED AND THE PRESENCE OF ONE IS SUFFICIENT.

The second issue before this Court's consideration requires this Court to find that the exercise of state authority may be preempted by federal law or may infringe on the right of Indian tribes on their reservation to make and be governed by their own laws. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980). However, these two impediments are not dependent on one another and either preemption by federal law or infringement on the right of tribes to make and be governed by their own laws may be "sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members." *Id.* at 143.

This Court should find that the State of New Dakota is prohibited from collecting tax against a tribally owned corporation on Indian land. First, the Court should find the State of New Dakota is preempted by federal law from imposing a state authority, like the Transaction Privilege Tax, on a tribally owned corporation within Indian Country, such as the Wendat Corporation on the Wendat Reservation. Second, the Court should find that the State of New Dakota is infringing upon the rights of the Wendat Tribe to make their own laws and be governed by their own laws when the State of New Dakota imposes a Transaction Privilege Tax on a Wendat Corporation on the Wendat Reservation.

A. THE STATE OF NEW DAKOTA IS PREEMPTED BY FEDERAL LAW AND CANNOT EXERCISE ITS AUTHORITY OVER AN INDIAN TRIBE AND IMPOSE THE TRANSACTION PRIVILEGE TAX OVER A WENDAT TRIBAL CORPORATION ON THE WENDAT INDIAN RESERVATION.

The exercise of state authority over Indian reservations and its members is preempted by federal law and the relevant federal, tribal, and state interests must be considered. *Bracker*, 448 U.S. 136 (1980).

The exercise of state authority over Indian reservations and its members is preempted by federal law and rooted in the tradition of tribal sovereignty. *Bracker*, 448 U.S. at 142, 143. This Court recognized the tradition of tribal sovereignty is "reflected and encouraged in a number of congressional enactments demonstrating a firm federal policy of promoting tribal self-sufficiency and economic development." *Id.* When considering tribal sovereignty, the geographical component is "highly relevant to the preemption inquiry. . .; and remains an important factor to weigh in determining whether state authority has exceeded the

permissible limits." Id. at 151. Further, this Court noted that "when on-reservation conduct involving only Indians is at issue, state law is generally inapplicable . . . ." *Id.* at 144. This Court also stated that "relevant federal treaties and statutes in terms of both the broad policies that underlie them and the notions of sovereignty that have developed from historical traditions of tribal independence." *Id.* at 144-45. This Court stated that the "inquiry is not dependent on mechanical or absolute conceptions of state or tribal sovereignty, but . . . [an] inquiry . . . [in] the nature of the state, federal, and tribal interests at stake." *Id.* at 145. Finally, this Court found that the "economic burden of the asserted taxes will ultimately fall on the Tribe," *Id.* at 151, and impose on tribal sovereignty.

The exercise of state authority is preempted by federal law and the relevant federal, tribal, and state interests must be considered. *Ramah Navajo School Board v. Bureau of New Mexico*, 458 U.S. 832, 837 (1982). This Court stated that the "State's interest in exercising its regulatory authority over the activity in question must be examined and given appropriate weight." *Id.* at 838. This Court reiterated the fact that "traditional notions of tribal sovereignty in congressional Acts promoting tribal independence and economic development, inform the pre-emption analysis that governs this inquiry." *Id.* (*See Bracker*, 448 U.S. at 145). Furthermore, this Court stated that "federal law should be construed generously, and federal pre-emption is not limited to those situations where Congress has explicitly announced an intention to pre-empt state activity." *Id.* at 838. (Internal quotation omitted). In *Ramah Navajo School Bd.*, this Court found that "[f]ederal regulation of the construction and financing of Indian educational institutions is both comprehensive and pervasive." *Id.* at 839. It was further stated that the "detailed regulatory scheme governing

the construction of autonomous Indian educational facilities is at least as comprehensive," *id.* at 841, to be preempted by federal law. Finally, this Court found the "comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state . . . tax . . . ." *Id.* at 846-47. Thus, with no perceived benefit to either the state of the Indian tribe, the imposition of the state tax is preempted by federal law.

The state authority to tax was not preempted by federal law if the state "provides substantial services to both [Indian tribe] and [non-Indian company]." *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989). The Court found that a "State's power to tax an activity connected to interstate commerce is not limited to the value of the services provided in support of that activity." Id. at 172. Further, this Court stated that "federal pre-emption is not limited to cases in which Congress has expressly . . . pre-empted the state activity." *Id.* at 176-77. This Court found that federal law does not preempt the state's taxes because "the State has had nothing to do with the on-reservation activity," *id.* at 186, and the "state tax has [not] imposed a substantial burden on the Tribe." *Id.*

In the present case, the Transaction Privilege Tax being imposed by the State of New Dakota on a Wendat Corporation should be subject to Indian preemption under *Bracker* since the Wendat Corporation is on the Wendat Reservation. The Wendat corporation is on the Topanga Cession, which is in Indian Country, specifically, the Wendat reservation. R. at 7. The Wendat Corporation will support jobs and earn more than $80 million in gross sales annually, which will fund the tribal public housing and nursing facilities. R. at 8. Additionally, the Wendat Corporation will have a café, cultural center, and museum which

will raise revenue by attracting non-Indian consumers and help with tribal sovereignty. *Id.* Similarly, in *Bracker*, when determining if a state authority is preempted by federal law, the court should look to the tribal sovereignty that will be accomplished. Additionally, the economic development with the construction of the Wendat Corporation should be considered when determining if a state authority should be federally preempted. In *Bracker*, the court stated "on-reservation conduct involving only Indians is at issue, state law is generally inapplicable . . . ." 448 U.S. at 144. Here, the Wendat Corporation is on the Wendat Reservation and will primarily involve tribal members with hopes of attracting non-tribal member consumers. R. at 8.

Furthermore, in *Ramah Navajo School Bd.*, the "comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state . . . tax . . . ." 458 U.S. at 846-47. The state tax was a burden on the tribe in *Ramah Navajo School Bd.*, and in the present case the tax would be cycled through the State back to Wendat tribe, R. at 11, since the Wendat Corporation will be in Indian Country and on the Wendat Reservation.

The case at hand is different than *Cotton Petroleum*. Since the state of New Dakota has nothing to do with the on-reservation activity then the tax should be preempted. In *Cotton Petroleum*, the State provided substantial services to the Indian tribe. 490 U.S. at 163. Furthermore, this tax would impose on the tribe and diminish the Tribe's self-determination. Because the State of New Dakota has nothing to do with the on-reservation activity, the State of New Dakota is preempted by federal law and cannot exercise its authority over an Indian

Tribe and impose the Transaction Privilege Tax over a Wendat Tribal Corporation on the Wendat Indian Reservation.

B. AN ACTION BY THE STATE OF NEW DAKOTA, INCLUDING THE IMPOSITION OF THE TRANSACTION PRIVILEGE TAX IN INDIAN COUNTRY, WHETHER IT IS IMPOSED ON THE TRIBE AS A WHOLE OR IMPOSED ON AN INDIVIDUAL OF THE TRIBE, INFRINGES ON THE RIGHT OF THE WENDAT INDIAN TRIBE TO MAKE AND BE GOVERNED BY ITS OWN LAWS.

A state action may not infringe on "the right of Reservation Indians to make their own laws and be ruled by them." *Williams v. Lee*, 358 U.S. 217, 220 (1958). When a state imposes an income tax on an enrolled member of a federally recognized tribe "the State has interfered with matters . . . relevant . . . to the exclusive province of the Federal Government and the Indians themselves." *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 165 (1972). To determine whether a state has infringed upon an Indian tribe's right to make and be governed by their own laws, it is irrelevant to consider whether the state action was imposed on an individual of an Indian tribe or as an Indian tribe in its entirety. *Id.* at 181.

Specifically, this Court in *Williams* found that "to allow the exercise of state jurisdiction . . . would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves." 358 U.S. at 223. Further, this Court recognized in Williams that "Congress has acted consistently upon the

assumption that the States have no power to regulate the affairs of Indians on a reservation." *Id.* at 220.

In *McClanahan,* when deciding that the State infringed upon the rights of the Indians to govern themselves, this Court looked to the relevant treaty and statutes since Indian tribes are "separate people, with the power of regulating their internal and social relations." 411 U.S. at 173. (*quoting United States v. Kagama,* 118 U.S. 175, 381-82 (1886)). This Court stated the "reservation of certain lands for the exclusive use and occupancy of [an Indian tribe] . . . was meant to establish the lands as within the exclusive sovereignty of the [Indian tribe] under general federal supervision." *Id.* at 175. It is further stated that "this Court has interpreted [treaties] to preclude extension of state law—including state tax law—to Indians on [a] Reservation." *Id.* This Court found that the "State is totally lacking jurisdiction over both the people and the lands it seeks to tax." *Id.* at 181. Furthermore, this Court in *McClanahan* concluded that the individual's rights as a "reservation Indian were violated when the state collected a tax from her which it had no jurisdiction to impose." *Id.* at 181. This Court noted that it is irrelevant that the state income tax was imposed on an individual as opposed to the Indian tribe in its entirety, since Congress "dealt with the tribes as collective entities," *id.* at 181, and these entities "composed of individual Indians." *Id.*

In the present case, the Wendat corporation is on Indian land and under *Williams,* the state authority would undermine the authority of the Wendat tribe to govern itself. With the Topanga Cession being within Indian Country and apart of the Wendat Reservation, under *McClanahan,* the imposition of the Transaction Privilege Tax should be found to infringe on the right of the Wendat tribe to make and be governed by its own laws. The *McClanahan*

court looked to the relevant treaties and statutes to determine that the state infringed on the right of the tribe, here, the Topanga Cession is assumed to be part Indian, r. at 3, and, hence, would be infringing on the rights of the Wendat tribe.

Because the Wendat Corporation is on the Wendat Reservation and within Indian Country, then the imposition of the Transaction Privilege Tax by the State of New Dakota should be found to infringe on the right of the Wendat Indian Tribe to make and be governed by its own laws.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court AFFIRM the decision of the Thirteenth Circuit Court of Appeals.

Dated: January 4, 2021

Respectfully Submitted,

T1010
Attorneys for Respondent

Appendix 1: Treaties

TREATY OF WAUSEON

The Commissioners Plenipotentiary of the United States in Congress assembled, receive peace from the Maumee Indians, on the following conditions:

ARTICLE I.
Three chiefs from the Maumee shall be delivered up to the Commissioners of the United States, to be by them retained till all the prisoners taken by the said Nation shall be restored to freedom.

ARTICLE II.
The Maumee do acknowledge themselves and all their people and clans to reside within the New Dakota Territory of the United States.

ARTICLE III.
The boundary line between the United States and Maumee Nation, shall be the western bank of the river Wapakoneta, between Fort Crosby to the North and the Oyate Territory to the South, and run westward from there to the Sylvania river.

ARTICLE IV.
The United States allot all the lands contained within the said lines to the Maumee, to live and to hunt on, and to such of the Maumee Nation as now live thereon; saving and reserving for the establishment of trading posts, six miles square at the Wapakoneta river where it meets Fort Crosby, and the same at the portage on that branch of the river into the Great Lake of the North.

ARTICLE V.
If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands allotted to the Maumee Nation in this treaty, except on the lands reserved to the United States in the preceding article, such person shall forfeit the protection of the United States, and the Indians may punish him as they please.

ARTICLE VI.
The Indians who sign this treaty, as well in behalf of all their tribes as of themselves, do acknowledge the lands east, south and west of the lines described in the third article, so far as the said Indians formerly claimed the same, to belong to the United States; and none of their tribes shall presume to settle upon the same, or any part of it.

ARTICLE VII.
If any Indian or Indians shall commit a robbery or murder on any citizen of the United States,

the tribe to which such offenders may belong, shall be bound to deliver them up at the nearest post, to be punished according to the ordinances of the United States.

ARTICLE VIII.
The Commissioners of the United States, in pursuance of the humane and liberal views of Congress, upon this treaty's being signed, will direct goods to be distributed among the Indians for their use and comfort.

Pemedeniek, by his x mark Quieuenontatironons, by his x mark Ochastequin, by his x mark Tionondati, by his x mark

Lamatan, by his x mark Yendat, by his x mark Ahouandate, by his x mark

Davis Parker Emerson Vance

Witness Brenton Tice

U.S. Indian Agent – at Fort Crosby
Signed this October 4, 1801
**Subsequently ratified by Congress without Amendment Monday February 8, 1802.

**** Cite as Treaty of Wauseon, Oct. 4, 1801, 7 Stat. 1404.**

TREATY WITH THE WENDAT OF 1859

ARTICLE I.
The Chiefs, Headmen and Warriors, aforesaid, agree to cede to the United States their title and interest to lands in the New Dakota Territory, excepting those lands East of the Wapakoneta River; with the Oyate Territory forming the southern border and the Zion tributary forming the northern born. The eastern terminus of these reserved lands is the line bordering the New Dakota Territory and the Oyate Territory.

ARTICLE II.
From the cession aforesaid, the following two reservations are made, (to wit:)

For J. B. Starrednah, one section of land in Door Prairie County, where he now lives. For Mrs. O. O. Wilder, one section of land where her husband attempted to homestead.

ARTICLE III.
In consideration of the cession aforesaid, the United States agree to pay to the Wendat Huron Indians, an annuity for the term of twenty years, of two-hundred thousand dollars; and will deliver to them goods to the value of one hundred thousand dollars, so soon after the signing of this treaty as they can be procured; and a further sum of ninety thousand dollars, in goods, shall be paid to them in the Year eighteen hundred and sixty, by the Indian agent at Fort Crosby.

ARTICLE IV.
The United States agree to pay the debts due by the Wendat agreeably to a schedule hereunto annexed; amounting to five-million dollars.

ARTICLE V.
The United States agree to provide for the Wendat, if they shall at any time hereafter wish to change their residence, an amount, either in goods, farming utensils, and such other articles as shall be required and necessary, in good faith, and to an extent equal to what has been furnished any other Indian tribe or tribes emigrating, and in just proportion to their numbers.

ARTICLE VI.
The United States agree to erect a hospital on their lands, under the direction of the President of the United States. In testimony whereof, the said Nathan Jennings, Davis Parker, and Jeremiah Chrush, commissioners as aforesaid, and the chiefs, head men, and warriors of the Wendat Indians, have hereunto set their hands at Wapakoneta River, on the twenty-sixth day of March, in the year eighteen hundred and fifty-nine.

**All parties signed with their mark
**Ratified by Congress on Tuesday November 19, 1859.

**** Cite as Treaty with the Wendat, March 26, 1859, 35 Stat. 7749.**

Appendix 2: Legislative History with the Treaty of Wendat

Assume the legislative history from the Treaty with the Wendat was published in the Congressional Globe (the Congressional Record did not begin until 1873). Cite the Congressional Globe excerpt below as:

Cong. Globe, 35th Cong., 2nd Sess. 5411-5412 (1859).

Consideration of the Treaty with the Wendat

SPEECH OF SEN. JAMES W. GRIMES OF IOW A:

I rise in support of the Treaty set before us negotiated by our faithful and dutiful Indian Agents and forwarded to us by President Buchanan and Indian Commissioner Cato Sells.

The Territory of New Dakota is crying out for statehood. Her population swells with our people setting out to establish and cultivate new lands. The sons and daughters of my constituents are looking for new lands to bring under cultivation and the lands of the Wendat offer promising and fertile grounds upon which to establish new settlements. The price negotiated by our Indian agents is fair and will adequately compensate the Indians for the loss of their lands. We should proceed to acquire the lands forthwith and provide new settlements with which to further grow the Territory of New Dakota. It won't be long until this body is admitting her to statehood as the newest member of our Union.

SPEECH OF SEN. LAZARUS W. POWELL OF KENTUCKY:

I agree with my college from Iowa that the Treaty before us is a necessary step toward the promising future of New Dakota. However I wonder if the Indian agent could have secured even more cessions from the Indians. I am told that few Indians now live along the Zion tributary and even fewer are to be found near the river Wapakoneta. Those lands must by necessity eventually be opened to the cultivation of our people. Would it not be expedient to secure those concessions now when the price may be lower than to allow the Indian to continue to cross upon lands destined for our settlement?

I will support the treaty before us, but I ask Commissioner Sells to consider sending another Agent forthwith to secure further concessions from the Indians. Doubtless our people will settle on some of these lands even now. It would be better to secure to us their legal title.

SPEECH OF SEN. SOLOMON FOOT OF VERMONT:

The Territory of New Dakota is even now emptying of its Indian population. The Wendat are the last Indians to yield their claims to the bulk of the Territory and I am heartened that what is now a Territory will emerge a state before long.

Beginning with the Maumee, the Indians of New Dakota have slowly yielded their claims to the bulk of the territory and even now the lands around Fort Crosby are becoming a center of commercial activity. It won't be long before the expansion of canals and railroads make the current lands unrecognizable.

In the many years since the first treaty was made at Wauseon, the Maumee have been reduced in number and no longer inhabit parts of their territory. Their descendants have become among the most peaceable of Indians and trade and commerce between the Maumee

and the noble residents of Fort Crosby have expanded to the benefit of both parties. I hope that the Wendat may benefit by example and learn from the many new residents of their neighboring lands.

The Indian may be assimilated by the good example of the prosperous farmer and forthright rancher. It is my hope that this treaty will secure peace between the Wendat and the settlers and that the Wendat welcome their new neighbors with open arms – ready to receive from them all of the benefits of Christianity and civilization which our citizens are capable of sharing.

SPEECH OF SEN. JAMES CHESNUT JR. OF SOUTH CAROLINA:

Treaties with the Indians are an expedient end to settle tensions on the frontier between our settlers and the Indians until our communities are numerically numerous enough to defend

themselves from any unwanted Indian intrusion. I will support this treaty, consistent with my support for most Indian treaties submitted to us by the President, but nothing in this treaty, like any that have come before it, will prevent American frontiersmen from making use of the lands around them.

** Sen. Toombs of Georgia then called the Question. Sen. Bragg seconded.

The Treaty with the Wendat was ratified by a vote of 50-12 with 3 absences and 1 abstention.

Consideration of a proposal to establish a Third Bank of the United States

SPEECH OF SEN. GEORGE PUGH OF OHIO:

Our frontiersmen cry out for the stable finance provided by the

Appendix 3: The Allotment Acts

CHAP. 818. An Act To authorize the allotment, sale, and disposition of the eastern quarter of the Maumee Indian Reservation in the State of New Dakota, and making appropriation and provision to carry the same into effect.

SEC. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized and directed, to first survey the entire Maumee Indian Reservation into townships. After the survey is complete the Secretary shall permit the Indians to select their individual allotments in the western three- quarters of the reservation under the following formula: 160 acres for each head of household, 80 acres for each single adult, and 40 acres for each child under eighteen years of age as of the time of this enactment. Unclaimed lands in the western three-quarters of the reservation shall continue to be reserved to the Maumee. The Indians have agreed to consider the entire eastern quarter surplus and to cede their interest in the surplus lands to the United States where it may be returned the public domain by way of this act.

SEC. 2. That the lands shall be disposed of by proclamation under the general provisions of the homestead and townsite laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: Provided, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the area described in section one of this Act to relinquish such allotment and to receive in lieu thereof a sum of eight-hundred dollars. Provided further, That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be surveyed all the lands embraced within said reservation, and to cause an examination to made of the lands by experts of the Geological Survey, and if there be found any lands bearing coal, the said Secretary is hereby authorized to reserve them from allotment or disposition.

SEC. 3. That the price of said lands entered as homesteads under the provisions of this Act shall be fixed by appraisement as herein provided, the full price being due to the local agent at Fort Crosby at time of entry. The President of the United States shall appoint a commission to inspect, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, excepting sections sixteen and thirty-six in each of said township. That said commissioners shall then proceed to personally inspect, classify, and appraise, in one hundred and sixty acre tracts each, all of the remaining lands embraced within each reservation as described in section one of this Act. In making such classification and appraisement said lands shall be divided into the following classes: Division of lands. First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, the mineral land not to be appraised.

SEC. 4. That nothing in this law provides for the unconditional payment of any sum to the Indians but that the price of said lands actually sold shall be deposited with the United States treasury to the credit of the Indians. The money deposited will earn interest at three per cent per annum and expended for their benefit at the direction of the Secretary of the Interior.

SEC. 5. That the Secretary of the Interior is authorized to reserve from said lands such tracts for townsite purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe.

SEC. 7. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this Act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at the rate of five dollars and five cents per acre, and the same are hereby granted to the State of New Dakota for such purpose. All other sections are subject to either allotment to Indians or sale in accordance with this Act.

SEC. 8. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the funds necessary to meet the United States commitment under Section 7 of this Act.

SEC. 9. That nothing in this Act contained shall in any manner bind
the United States to purchase any portion of the land herein described,
except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of the said lands and to expend and pay over the proceeds received from the sale thereof as herein provided.

Approved, May 29, 1908.

CHAP. 42. An act for the relief and civilization of the Wendat Band of Huron Indians in the State of New Dakota.

SEC. 1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Indian Agent at Fort Crosby shall, as soon as practicable, formally continue the surveying of the western half of the lands reserved by the Wendat Band in the 1859 Treaty. After the survey is complete the Commissioners shall give every adult reservation Indian one year from which to pick an allotment of 160 acres for themselves; and one parent or guardian may select an allotment of their choosing of 40 acres for each minor not yet an adult. All lands not selected within one year of the survey's completion shall be declared surplus lands and open to settlement. The eastern half of the lands reserved by the Wendat Band in the 1859 Treaty shall continue to be held in trust by the United States for the use and benefit of the Band.

SEC. 2. The United States hereby agrees to pay into the Treasury, in the name of the Wendat Band, the sum of three dollars and forty cents for every acre declared surplus, provided that no matter how much land is ultimately surplus the Wendat Band shall not be entitled to a payment of more than two-million and two- hundred-thousands dollars in total and complete compensation.

SEC. 3. That all money accruing from the disposal of said lands in conformity with the provisions of this act shall be placed in the Treasury of the United States to the credit of all the Wendat Band of Indians as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years. Provided, That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof.

SEC. 4. The United States hereby apportions an additional $40,000 to the Secretary of Interior to pay for the final costs of the survey and allotment, to move the Indians unto their allotments as quickly as possible, and to open the surplus lands to settlement.

Approved, January 14, 1892.

Appendix 4: Legislative History of the Allotment Acts

**Assume the following is from the 23rd Volume of the Congressional Record on Jan. 14, 1892 starting on page 1777.

HOUSE Thursday January 14, 1892

The House met at twelve o'clock. Prayer by the Chaplain, Rev. O. O. Milburn.

The SPEAKER: The House now turns to the consideration of

An act for the relief and civilization of the Wendat Band of Huron Indians in the State of New Dakota.

The Act having been read twice already without comment, having been approved by unanimous consent in the Senate, and having received a recommendation without report from the Committee on Indian Lands we proceed to consider the merits.

The Clerk read the following message from the Secretary of Interior into the record:

DEPARTMENT OF THE INTERIOR, Washington, December 15, 1891.

In accordance with Congressional demands to open the Wendat lands of New Dakota a corps of allotting agents were sent to the field in the summer, but the Indians refused to act until they received the per capita appropriated by the act, saying "they would travel but one road at a time;" thus much valuable time was lost and the appropriation expended in part without results. Of the 1,372 Indians of this reservation 308 have received allotments, leaving 1,064 yet to be provided for. I have this day addressed a communication to the Speaker of the House of Representatives and the President of the Senate, asking the passage of a bill or Joint resolution appropriating $15,000 to complete this work and to formally appropriate the money and authorize the allotment of the Wendat lands.

By the opening of this reservation more than 2,000,000 acres of valuable land will be added to the public domain, equal to 12,500 homesteads of 160 acres each.
This matter is presented with request for favorable consideration, in order if possible to complete the work and open the lands to settlement in the early spring.

There are many families awaiting the opening of these additional lands
and the people already settled in New Dakota are greatly interested in this work being accomplished. It would, in my judgment, greatly advance the public interest to have this appropriation made at an early day. You will observe that it is recommended in the President's message.

Most respectfully, JOHN W. NOBLE, Secretary.

Mr. SPEAKER: Having recognized the request from Interior for an appropriation of funds and a full authorization to allot the Wendat lands we open the bill up for debate.

Mr. HENDERSON of Iowa. Let me ask the gentleman if this
is unanimously reported from the committee?

Mr. HARVEY. Unanimously.

Mr. DOCKERY. I understand· this report is from the Committee on Indian Affairs?

Mr. HARVEY. Yes, sir; and made unanimously.

I will further say that, anticipating the opening of these lands, a very large number of people congregated along the border in the early fall, believing the surveys would be completed in from four to six weeks. These people have been settled there and have been waiting all winter. They come from all of the States of the Union, from Texas, Kansas, South Dakota, and almost all of the States, and it is important that work should be resumed speedily in order to allow these people to go on the lands in the early spring and it should be remembered that spring comes early in that latitude, and make their homes, so as to avail themselves of the planting season.

Mr. MILLER. What is the extent of the land?

Mr. HARVEY. About 4,000,000 of acres, at least 2,000,000 of which we expect will be opened to the public domain by way of allotment.

Mr. ULLRICH: The work in the Bureau of Indian Affairs was perhaps never so large as now, by reason of the numerous negotiations which have been proceeding with the tribes for a reduction of the reservations, with the incident labor of making allotments, and was never more carefully conducted. The provision of adequate school facilities for Indian children and the locating of adult Indians upon farms involve the solution of the "Indian question."

Everything else: rations, annuities, and tribal negotiations, with the agents, inspectors, and commissioners who distribute and conduct them-must pass away when the Indian has become a citizen, secure in the individual ownership of a farm from which he derives his subsistence by his own labor, protected by and subordinate to the laws which govern the white man, and provided by the General Government or by the local communities in which he lives with the means of educating his children. When an Indian becomes a citizen in an organized State or Territory his relation to the General Government ceases, in great measure, to be that of a ward; but the General Government ought not at once to put upon the State or Territory the burden of caring for the Indian.

The good work of reducing the larger Indian reservations, by allotments in severalty to the Indians and the cession of the remaining lands to the United States for disposition under the homestead law, has been prosecuted during the year with energy and success. In September last I was enabled to open to settlement in the Territory of Oklahoma 900,000 acres of land, all of which was taken up by settlers in a single day. The rush for these lands was accompanied by a great deal of excitement, but was, happily, free from incidents of violence. It was a source of great regret that I was not able to open at the same time the surplus lands of the Cheyenne and Arapahoe Reservation, amounting to about 3,000,000 acres, by reason of the insufficiency of the appropriation for making the allotments. Deserving and impatient settlers are waiting to occupy these lands, and I urgently recommend that a special deficiency appropriation be promptly made of the small amount needed, so that the allotments may be completed, and the surplus lands opened in time to permit the settlers to get upon their homesteads in the early spring. I urge we act today to concur with the unanimous voice of our Senate colleagues approve the allotment bill before us.

Mr. MANSUR. Mr. Speaker, this is a very important matter
to a large number of people in and around New Dakota, more important, perhaps, than many members may realize. The opening of these lands has been looked forward to in that region with the greatest interest for long years, and unless this resolution is passed today and the money given to the Department for the purpose of allotting these Indians, it will put back the settlement for one crop season.

The members of the House will remember that when the Creek country purchase, known as Oklahoma, was thrown open on April 22, 1889, it was then so late that in that climate the opportunity for making necessary improvements by breaking up the ground was almost precluded, and, as a result, little or no crop was raised that year. Hence, as to these lands, if anything, and farther west and in a drier climate, there is a greater necessity for their earlier opening.

It was the Committee on Territories that reported the bill opening Oklahoma, and we reported $15,000 in that bill for the opening of 1,800,000 acres. This tract of land has 4,000,000 acres, and in it are a vastly larger number of Indians to settle with and to allot. The Secretary of the Interior, states that for a full month, when all these allotting agents with their equipments were on hand, the Indians stood silent, stubborn, and obstinate, and would not have anything to do with the matter, would not come in and take their allotments or make any selections, and this reluctance on their part had to be overcome before anything could be done.

Mr. PICKLER. I will suggest that these Indians are distinctly "blanket Indians," and very little civilized.

Mr. MANSUR. By the way, I desire to say to the House that I visited this reservation during this last summer, and our soldiers at Fort Crosby told me that the Wendat are the most distinctly warrior Indians left on the continent today; that they keep themselves farther away

from white people, and have less to do with them than any others; that they are only to be seen when they come to the agencies for the purpose of drawing their annuities, and hence they are wholly wild and savage; and when it comes to allotment, you cannot bring the same influences to bear upon them that you can bring to bear upon other Indians more civilized.

In this reservation of 4,000,000 acres there is twice as much land to be allotted for $15,000 as was allotted for the same amount in the case of the Creek lands in Oklahoma, namely, 1,800,000 acres; and I appeal to the House in behalf of the people of New Dakota who are looking for homes to allow this small appropriation of $40,000 additional dollars to be made, and to allow this work to be done, so that the people there can have a chance to enter upon these lands in time to make a crop for this year. If that is not done by the first of April it will be too late.

Mr. DOCKERY. I desire to say, in addition to what my colleague has said, that this seems to be a very necessary and proper expenditure in view of the existing circumstances, and I hope the House will authorize it.

Mr. PEEL. It is now for the House to say whether this allotment ought to go on, in order to enable the Administration to open the remainder to settlement. That is all I care to say or can say about the matter.

The SPEAKER. The Clerk will report the Bill.

[The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed by unanimous consent.]

**Assume the following is from the 42nd Volume of the Congressional Record on May 29, 1908 starting on page 2345.

HOUSE

Friday May 29, 1908

The House met at one o'clock pm. Prayer by the Chaplain, Rev. J.T. Butler.

Mr. PRAY. Mr. Speaker, I move to suspend the rules, discharge the Committee of the Whole House on the state of the Union from the further consideration of the bill (S. 2418) An Act To authorize the allotment, sale, and disposition of the eastern quarter of the Maumee Indian Reservation in the State of New Dakota, and making appropriation and provision to carry the same into effect.

The SPEAKER. Is a second demanded?

Mr. STEPHENS of Texas. Mr. Speaker, I demand a second.

The SPEAKER. A second is ordered under the rules. The gentleman from New Dakota is entitled to twenty minutes and the gentleman from Nevada to twenty minutes.

Mr. PRAY. Mr. Speaker, the purpose of this bill is to provide for the survey of the lands of the Maumee Indian Reservation, situated in the State of New Dakota, and for the allotment of the lands in severalty to the Indians and for the sale and disposal of the surplus lands after allotment. This reservation consists of 4,776,000 acres of land. In the summer of 1907, Major Hans, who has been connected with the Indian Service for the past thirty- seven years, met the Indians in a conference or general council as it is termed, and the matters to which this bill relates were thoroughly discussed at that council and the Indians were made to understand just what it was proposed to do. All the details were fully discussed. As a result an agreement was entered into which was ratified by 95 per cent of the Indians of the reservation. Pursuant to that agreement a bill was prepared in the Indian Office which was introduced in the Senate by the Senator from New Dakota [Mr. Brenton] and passed, it having previously been referred to the Secretary of the Interior and having his approval. It came to the House and was referred to the Committee on Indian Affairs of the House, where several amendments were made to the bill, to conform more fully to the agreement entered into with the Indians on the part of Major Hans in the summer of 1907.

I might also say at this point that Major Hans was present during the hearings before the subcommittee and the full committee of the House Committee on Indian Affairs, and made many valuable suggestions, and had there the agreement which was entered into with the Indians, so that this bill could be made to conform in every respect to the wishes of the Indians, as expressed in the agreement. The bill provides that 160 acres of land shall be allotted to each Indian.

It is not known just what amount of coal land will be found until the surveys are made but the allotment will amount to from 40 to 160 acres, in accordance with the status of the allottee and not including any coal lands to be reserved separately.

The only appropriation the bill carries that is not reimbursable is the one providing for the payment of $5.05 an acre to the Indians on account of sections 16 and 36, granted to the State of New Dakota for school purposes, and certain tracts reserved for agency and school purposes.

Mr. GAINES of Tennessee. Mr. Speaker, are these public lands never, never to get to be worth more than $5.05 an acre?

Mr. PRAY. I will say that I think it is a very fair valuation for this land. It is probable that some portions of sections 16 and 36 are worth more, but many portions are worth less.

Mr. GAINES of Tennessee. If the gentleman will go back and look at the old Indian statutes, passed in the early days of the Republic, he will find that the value of the land was then fixed at $1.25. A century ago the land was fixed at $1.25. Millions of people have gone out into these Indian countries, and millions of people have made those States, and yet these Indian lands and other lands are being sold at $5.00 per acre. I do not understand it. Surely after all this time the land is worth more?

Mr. HACKNEY. Mr. Speaker, I will state to the gentleman that in disposing of these lands they were to be appraised by a commission which is to be appointed. The lands are to be surveyed, and the only lands sold at $5.05 are the school lands, unless after a certain period they can not be disposed of, and then they are to be offered at public auction. But $5.00 an acre is the minimum limit, and the maximum is the appraised value, made by the commission.

Mr. GAINES of Tennessee. Well, I am glad to know that we are to have in this bill a kind of policy that will give some chance to get the real market value of this land for the Indians. I understand that all lands unsold will continue to belong to the Indians is that right? Until there is payment the land belongs to the Maumee?

Mr. PRAY. I hope the gentleman will understand that $5.05 is fixed for sections 16 and 36, the school lands granted to the State of New Dakota. The value of the other lands depends upon the appraisement fixed by the commission. We expect all of the opened lands to be sold for their market price but at least $5.00 per acre.

Mr. HACKNEY. Mr. Speaker, the gentleman from New Dakota has stated the terms of this bill correctly, and it seems to me there is no question but that the bill should pass as amended.

I was on the subcommittee that gave attention to this bill for a number of weeks, and I reported it to the House with the amendments. We conferred with the Commissioner of Indian Affairs and his assistants, particularly with Major Hans, who had gone into New Dakota among these Maumee Indians last year, and after spending considerable time had a written agreement with them in regard to the disposal of this reservation, and the amendments, which are quite lengthy here, were drawn for the purpose of making this bill conform to the terms of that written agreement in every essential detail. The greater portion of the land is grazing land. We give the Indians more than they asked for in the contract, as we raised the allotment to 160 acres.

Now, with regard to the disposition of the land. A commission shall go there and appraise this land after the allotments are made. Then the land shall not be disposed of at less than the appraised value, and in no event shall any land be disposed of at less than $5.00 an acre.

Mr. FERRIS. Will the gentleman permit a question? What did the facts develop in the committee with reference to the degree of intelligence of these Indians?

Mr. HACKNEY. The reports are that these Indians are capable now of assuming the duties of citizenship.

They are a very intelligent class of Indians.

Mr. FERRIS. How many are there?

Mr. HACKNEY. There are a little less than 1,500. The last census showed a little over 1,300. There are now between 1,300 and 1,600 Indians.

Mr. FERRIS. There is a treaty of that kind?

Mr. HACKNEY. A contract signed by over 95 per cent of the Indians on the reservation. In fact, an amendment was made to the bill to conform to that contract with respect to the commissioners.

Senator Brenton, who had gone over the land last summer and made an examination of it, was consulted in regard to all of these amendments. The amendments are satisfactory to the Indian Bureau, to the Secretary of the Interior, to the Reclamation Service, to the Representatives from the State of New Dakota, and to the Indians, and the bill as thus amended should pass.

Mr. MONDELL. Mr. Speaker, I have gone over this bill, and
I believe it has been very carefully prepared. Inasmuch as it is necessary to begin at the very foundation in this case and to provide, first, for allotments, then for opening the lands to settlement, and for reservation of coal, the bill is quite a long one. I think the committee has

given the bill careful consideration, and it seems to me its provisions are excellent. It does justice to the Indians, and I believe will promote the interests of the incoming settlers.

Mr. FERRIS. I have listened with a good deal of interest to the different remarks made upon this measure, and living in an Indian country, and living in a homestead country, I should feel recreant to my duty if I did not give the House the benefit of the observations I have made with reference to Indian lands and with reference to homestead lands.

The time has come in the history of the United States when it is not advisable, not desirable, nor right to leave Indians huddled together on a reservation. They are to be our coequals as citizens. They were the first citizens here. We owe them our respect. They are clothed with the power of the ballot and with other powers of citizenship that entitle them to the other enlightened and beneficent conditions that the White people enjoy. They can not have these advantages huddled together on an Indian reservation. They need to go onto an individual tract or onto an allotment to make it a home; they need to have the other vacant lands in that community occupied, and let home owners and home builders come in with their influence and make the Indian citizen what we all hope for him and all expect him to be. I feel an interest in this bill. I believe it will aid the State of New Dakota. I believe it will aid the Indian. I believe that it will even aid this Congress to open up those lands and let them be settled by home builders and home owners. [Applause.]

Mr. STEPHENS of Texas. Mr, Speaker, I gave out all of the time on this side, and consequently have none left. I thank the gentleman for yielding to me. This bill is on all fours with all of the bills of this character opening up Indian reservations.

More than ten years ago Congress entered on the general policy of requiring the Secretary of the Interior, through the Commissioner of Indian Affairs, to send allotting agents on the various reservations and allot to each Indian a certain amount of land in accordance with the treaty made with that Indian tribe. In pursuance of that policy we have opened up a great many reservations in the United States, and I hope we will follow out this policy and that in a few years there will not be a single Indian reservation left in the borders of this whole country. [Applause.]

Mr. PRAY: The United States is constituted a trustee for the Indians and is required to dispose of the lands and to expend and pay over the proceeds received from the sale of surplus lands in the manner and for the purposes provided in the bill. The Secretary is also required to reserve and set aside for education, giving over to the State of New Dakota lands within each survey tract for that purpose.

In my judgment this is a meritorious bill, and should receive universal approval. It makes ample provision for the protection of the rights of the Indians and, so far as I can see, it will have a tendency to promote the general welfare and advancement of the Indians. It will stimulate the habit of industry, thrift, and economy to an extent hitherto unknown under old conditions. After the surplus lands are disposed of and the cost and expenses provided for in

the bill deducted the balance of the moneys shall be paid into the Treasury of the United States and placed to the credit of the Indians.

Aside from the benefits that will manifestly accrue to the Indians by reason of the passage of this bill, opportunity will be given to hundreds of worthy men and women of the East to build up desirable homes in my State, and that, to my mind, is an exceedingly important argument in favor of the bill. Mr. Speaker, every Member who has addressed the House during the consideration of this measure has spoken in its favor, and being confident of the outcome, I therefore call for a vote.

The SPEAKER. The question is on suspending the rules, agreeing to the amendments, and passing the bill. The question was taken.

Mr. STEPHENS of Texas. Mr. Speaker, I demand the yeas and nays.

Mr. PRAY. Mr. Speaker, I make the point of no quorum.

The SPEAKER. The point is sustained. The Doorkeeper
will close the doors, the Sergeant-at- Arms will notify absentees.
The question will be taken on the motion to suspend the rules,
agree to all of the amendments, and pass the bill as amended. The Clerk will call the roll.

The question was taken, and there were: yeas 179, nays 5, answered "present" 19, not-voting 185.

Appendix 5: Census Data Table

	Census Data % American Indian / Native Alaskan		
	Maumee Indian Reservation	Topanga Cession	Western Half of the Wendat Reservation
1880	92.4%	98.3%	97.7%
1890	93.1%	97.0%	96.9%
1900	92.9%	92.0%	22.5%
1910	90.6%	80.4%	18.6%
1920	61.3%	20.3%	19.4%
1930	49.7%	21.6%	20.1%
1940	42.5%	21.8%	19.6%
1950	41.8%	20.8%	17.8%
1960	39.9%	19.4%	20.4%
1970	34.6%	17.6%	21.6%
1980	38.2%	15.5%	19.5%
1990	38.6%	16.8%	19.5%
2000	39.6%	17.0%	18.7%
2010	40.4%	17.9%	19.0%