No. 20-1104

IN THE

Supreme Court of the United States

MAUMEE INDIAN NATION,
Petitioners,
v.

WENDAT BAND OF HURON INDIANS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

Team No. T1011

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STATEMENT OF THE CASE

STATEMENT OF PROCEEDINGS

On November 18, 2015 Petitioner, the Maumee Indian Nation (hereinafter "Maumee Nation" filed a complaint against Respondent, the Wendat Band of Huron Indians ("Wendat Band) seeking a judicial Declaration that any commercial development by the Wendat Commercial Development Corporation ("WCDC") in the Topanga Cession should be subject to the State of New Dakota's Transaction Privilege Tax licensing provision due to the WDCD operating in Maumee Nation territory.[1] Alternatively, The Maumee Nation sought a judicial Declaration stating the Topanga Cessions was not part of Indian Country under Allotment Acts, which would have led for half of the Transaction Privilege Tax to be remitted to the Maumee Nation pursuant to the provision set forth under §212(6) of the Transaction Privilege Tax.[2]

In 2018, the United States District Court for the District of New Dakota held that the Topanga Cession was part of the Maumee Nation.[3] It followed that any commercial development made on the Topanga Cession that amounted to more than $5,000 in gross sales was subject to the Transaction Privilege Tax licensing and taxation laws, which amount destined to be remitted to the Maumee Nation.[4]

On September 20, 2018, Respondent appealed the District Court's decision.[5] On September 11, 2020 the United States Court of Appeals for the Thirteenth Circuit reversed

[1] *See Maumee Indian Nation v. Wendat Band of Huron Indians*, 305 F. Supp. 3d 44 (D. New Dak. 2018).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *See Wendat Band of Huron Indians v. Maumee Indian Nation*, 933 F.3d 1088 (13th Cir. 2020).

the District Court's decision, and it remanded the case back to the District Court with instructions to withdraw and reissue its Declaration in a manner consistent with the Thirteenth Circuit's own opinion.[6]

Subsequently, the Maumee Nation filed its petition for writ of certiorari with this Honorable Court on the grounds that the Thirteenth Circuit erroneously applied *McGirt v. Oklahoma* to the case at bar and erroneously applied well-established precedents set by this Honorable Court on the issues of infringement and preemption. This Honorable Court granted certiorari on November 6, 2020.

STATEMENT OF THE FACTS

The Maumee Indian Nation ("Maumee Nation") and the Wendat Band of Huron Indians ("Wendat Band") are two distinct federally recognized Indian tribes with traditional lands in the State of New Dakota.[7] The tribes traditional land claims overlap, and their current reservations share a border.[8]

Each tribe entered in their respective treaties with the United States from which each tribe was granted land within the State of New Dakota.[9] In 1802, the Maumee Nation and the United States signed the Treaty of Wauseon, which reserved lands West of the Wapakoneta River to the Maumee Nation.[10] In 1859, Wendat Band and the United States signed the Treaty with the Wendat, which reserved lands east of the Wapakoneta River to Wendat Band. *Id.* However, some time before the Treaty with the Wendat, the Wapakoneta River's border shifted approximately three miles westward into Maumee Nation's territory.[11] Such shift

[6] *Id.*
[7] *Maumee Indian Nation v. Wendat Band of Huron Indians*, 305 F. Supp. 3d 44 (D. New Dak. 2018).
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id. (See also* Appendices 1 and 2, attached at the end of this document)

created a large territory in Door Prairie County which was located west of the Wapakoneta River in 1802, but east of the Wapakoneta River as of 1859.[12] As a result, both the Maumee Nation and the Wendat Band have referred to their boundary description in their respective treaties to maintain the right to these lands throughout history.[13] That territory is the "Topanga Cession."[14] The Maumee Nation and Wendat Band have been disputing the ownership of the Topanga Cession for at least the past eighty years.[15] Until the events that led to the suit at bar, neither party found reason to involve a federal court of the United States to resolve the dispute.[16]

However, Wendat Band started purchasing land in fee from non-Indian owners located within the Topanga Cession in late 2013.[17] In mid-2015, Wendat Band announced a development plan which included residential and commercial operations in the acquired lands.[18] Later that year, the Maumee Nation acquired knowledge of this plan.[19] Subsequently, the Maumee Nation sent its representatives to approach the Wendat Commercial Development Corporation ("WCDC") and the Wendat Tribal Council to remind them that the Topanga Cession was still Maumee Nation territory under Treaty of Wauseon of 1802.[20]

Determining who owns the Topanga Cession is a crucial issue due to the State of New Dakota's Transaction Privilege Tax ("TPT").[21] The TPT is a tax levied on the gross

[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.* New Dakota's Transaction Privilege Tax is codified under 4 N.D.C. §212.

proceeds of sales or gross income of a business and paid to the state for the "privilege of doing business" in New Dakota.[22] The provisions in the TPT are important to the Maumee Nation because under the TPT the WCDC is not a Maumee Nation entity and, under 4 N.D.C. §212(4), the WCDC must obtain a license and pay the appropriate tax to the State, whom in turn would remit the entirety of the tax to Maumee Nation.[23] Specifically, because the WCDC is a non-member enterprise operating on Maumee Nation's territory, the WCDC must pay the State of New Dakota the 3.0% under §212(5).[24] Consequently, that 3.0% would be remitted to the Maumee Nation.[25] The TPT would not only help the Maumee Nation in its economic development and right to self-govern, but it would also aid low-income members living within the Maumee Nation.[26] Helping the Maumee Nation this way would lead to Maumee Nation members being more likely to be consumers of the goods and services at the WCDC, increasing transactions between the members and the Wendat Band's enterprise.[27]

Nonetheless, the issue at hand is that the WCDC and the Wendat Tribal Council claim the Topanga Cession became part of the Wendat Reservation at the Treaty with the Wendat of 1859.[28] Alternatively, they claimed that if the Topanga Cession was part of the Maumee Nation after 1859, then the Allotment Act in 1908 diminished Maumee Nation's interests in that land, reverting it back to the Wendat pursuant to the 1859 treaty.[29] Eventually, Wendat Band recognized that the territory it purchased in 2013 was not taken

[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*

into trust, making it Indian fee land.[30] Wendat band claimed that the state of New Dakota would have no authority to collect the TPT as long as it is in Indian country "because the state's power to collect the tax is either preempted by federal law or infringes upon the Band's own sovereign powers."[31]

SUMMARY OF ARGUMENT

As the District Court of New Dakota correctly opined, the Topanga Cession was, and still is, Maumee Nation territory. As such, any development built by WCDC would be on Maumee Nation territory. It follows that, if the WCDC's commercial enterprise would end up making more than $5,000 in gross sales, they would be subject to the licensing under the TPT license and would have to pay the tax to the State of New Dakota. Said tax would then be remitted to the Maumee Indian Tribe in its entirety.

The only way for Wendat Band to prevail in its claims to the Topanga Cession is for Respondent to prove that Congress had the intent to diminish the Maumee Nation's rights and explicitly included said language in a statute. The present facts suggest that Maumee Nation owned, and continues to own, interests in the Topanga Cession as there is no explicit language from Congress that extinguished Maumee Nation's rights. It did not appear that Congress ever recognized the shift of the river that occurred in between the two treaties. Therefore, there is no evidence that Congress intended to change the boundaries or to diminish the Maumee Nation's rights to the Topanga Cession.

Due to such lack of evidence, this Honorable Court should find that the Topanga Cession is part of Maumee Nation. It would follow that the WCDC would be required to

[30] *Id.*
[31] *Id.*

obtain a TPT license, must pay the tax to the State of New Dakota, which will then be remitted to the Maumee Nation's. Additionally, this Honorable Court should find that the tax is applicable in this case because it is not infringing on Maumee Nation's right to self-govern. Additionally, the State of New Dakota would bear the burden to collect the tax from an enterprise not owned by the Maumee Nation, and then remit said proceedings to the Maumee Nation. Therefore, this Court should reverse the Thirteenth Circuit Court's decision due to said decision not conforming with this Court's well-established precedents.

ARGUMENT

I. THERE IS NO EVIDENCE SUGGESTING CONGRESS'S INTENT TO EXTINGUISH THE MAUMEE NATION'S RIGHTS TO THE TOPANGA CESSION, AS REQUIRED UNDER *MCGIRT*.

Congress must show a clear intent to change boundaries before diminishment will be found.[32] The evidence of congressional intent must be a direct reference to the transferring of land or other language explicitly expressing the total surrender of all tribal interests.[33] There must be specific language referencing to cession or similar text evidencing the "present and total surrender of tribal interests."[34]

In *McGirt*, the United States Supreme Court opined that Congress must explicitly state its intent to withdraw promises made to an Indian Tribe on a Treaty.[35] Although the central issue in *McGirt* was whether a person committed a crime within "Indian Country" under the Major Crimes Act, the Supreme Court's opinion is important for the case at bar. In *McGirt*, the pertinent document was the Treaty with the Creeks.[36] In said Treaty, Congress

[32] *Solem v. Barlett*, 465 U.S. 463, 470 (1984). (hereinafter "*Solem*").
[33] *McGirt v. Oklahoma*, 140 S.Ct. 2452, 2463 (2020). (hereinafter "*McGirt*").
[34] *Nebraska v Parker*, 136 S. Ct. 1072 (2016). (hereinafter "*Parker*")
[35] *McGirt* at 2482.
[36] *Id.*

guaranteed specific lands west of the Mississippi River which would be "secure forever" to the Creek Nation in exchange for land East of the Mississippi River.[37] Further, Congress promised to allow the Creek Nation to govern themselves.[38] As a consequence, both Congress and the Creek Nation settled on boundary lines for the new and permanent home to the whole Creek Nation.[39] In a subsequent Treaty of 1856, Congress further reinforced its initial promises to the Creek Nation by indicating that no portion of the Creek Reservation shall ever be embraced or included within, or annexed to, any Territory or State.[40]

However, despite the promises made in the above-mentioned Treaty, the United States entered into another Treaty with the Creek in 1866, compensating the Tribe 30 cents per acre and reducing the size of Creek Nation.[41] Further, that Court acknowledged the fact that Congress broke more than a few of its promises to the Creek Nation.[42] As a result of said broken promises, that Court pointed out that the territory encompassed in the 1832 Treaty was currently fractured into pieces by the time of that suit, with persons unaffiliated with the Creek Nation possessing land within the Creeks.[43]

To determine whether the Creek Nation continued to hold the whole territory as a reservation, that Court explained that the only place it may look is within the Acts of Congress.[44] That Court emphasized individual States do not have the authority to reduce federal reservations within their borders.[45] Otherwise, that Court claimed, States or neighbors

[37] *Id.* at 2459.
[38] *Id.*
[39] *Id.*
[40] *Id.* at 2461.
[41] *Id.*
[42] *Id.* at 2462.
[43] *Id.*
[44] *Id.*
[45] *Id.*

would encroach on the tribal boundaries, legal rights, and promises guaranteed by Congress to Indian Tribes.[46]

Further, that Court clarified that legislators passing laws that would tiptoe the edge of disestablishing Indian Reservations were not sufficient to divest a reservation of its lands and diminish its boundaries.[47] Congress must explicitly state its intention to break the promise of a reservation, regardless of how many promises to a tribe the federal government has already broken.[48] Therefore, despite the Allotment Acts dividing parcels of land, conveying deeds to individuals, and allowing said individuals to sell said parcels, that Court emphasized that said Acts lacked statutes that explicitly contained provisions to the effect of "present and total surrender of all tribal interests."[49] On the other hand, the Supreme Court in *McGirt* pointed out instances where Congress explicitly abolished reservation lines.[50]

Lastly, *McGirt* reinforced the notion that there is no need to consult extratextual sources when the meaning of the statute is clear.[51] Further, when the terms are clear, extratextual sources such as subsequent treatment of a disputed land, may not be used to overcome the clear terms of a statute.[52] If anything, said extratextual sources should be used to clarify and not create ambiguity about a statute's original meaning.[53]

In *Parker*, that Court ruled that the passage of an 1882 Act empowering the United States Secretary of the Interior to sell the Tribe's land west of the right-of-way did not diminish the Omaha Indian reservation in 1882.[54] That Court started its analysis by looking

[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.* at 2463-2464.
[50] *Id.* at 2465.
[51] *Id.* at 2469.
[52] *Id.*
[53] *Id.*
[54] *Parker* at 1072.

at the plain language of the underlying 1882 Act, which fell into the category of surplus land act.[55] To diminish reservation boundaries, a statute must include textual indications of Congress's intent to diminish reservation boundaries.[56] Said language must include explicit references to cession or similar text evidencing the "present and total surrender of tribal interests."[57] Additionally, the Supreme Court emphasized that a statutory provision restoring a portion of a reservation "to the public good" creates a presumption that Congress intended for the reservation to be diminished.[58] Since that 1882 Act did not have any hallmark of diminishment, there was no Congressional intent to diminish that reservation.[59]

In the case at bar, the Treaty with the Wendat did not abrogate Maumee Nation's rights to the Topanga Cession and the Maumee Allotment Act of 1908 did not diminish the Maumee Nation. The Treaty with the Wendat Band and its legislative history never explicitly state that Maumee Nation's rights to that land are extinguished, as *McGirt* requires.[60]

Applying *McGirt* to the current case requires looking for explicit language that demonstrates Congress's intent to extinguish the Maumee Nation's interest in the Topanga Session. The pertinent documents in this suit are the Treaty of Wauseon of 1801,[61] the Treaty with the Wendat of 1859,[62] and the Maumee Allotment Act of 1908. The Thirteenth Circuit Court of Appeals referred to the Treaty with the Wendat Band and ruled that the Maumee Nation's claim to the Topanga Cession had been abrogated.[63] However, a close reading to

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[55] *Id.* at 1079.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.* at 1082.
[60] *See Treaty with the Wendat*, March 26, 1859, 35 Stat. 7749; *See also* Cong. Globe, 35th Cong., 2nd Sess. 5411-5412 (1859).
[61] *Treaty of Wauseon*, Oct. 4, 1801, 7 Stat. 1404.
[62] *Treaty with the Wendat*, March 26, 1859, 35 Stat. 7749.
[63] *See Wendat Band of Huron Indians v. Maumee Indian Nation*, 933 F.3d 1088 (13th Cir. 2020).

that Treaty does not reveal any sort of language that would indicate Congress's intent to extinguish Maumee Nation's rights on the Topanga Cession at that time.[64] Further, there is no language that refers to the "public good." Notably, the word "Maumee Nation" does not appear in the Treaty with the Wendat.

As mentioned above, the Maumee Nation's territories confined west of the Wapakoneta River in 1801.[65] However, around the 1830s, the river shifted westward into Maumee Nation territory. As a result, some of the territory Congress previously transferred to the Maumee Nation ended up east of the river. About 30 years later, Congress granted the territories East to the Wapakoneta river to Wendat Band through the Treaty of 1859. Congress granting the territories East of the river to the Wendat Band was at most a breach of promises that Congress made to the Maumee Nation in the Treaty of Wauseon. Just because the river shifted into Maumee Nation's territory, it does not warrant that the Topanga Cession automatically turned from Maumee Nation territory to the United States. Maumee Nation owned the Topanga Cession irrespective of where the river flowed. Further, Congress did not seem to acknowledge such shifts in subsequent documents. [66]

Allowing the presumption that the boundary between Maumee Nation and the United States was the flow of the Wapakoneta River, may lead to problematic consequences. For example, if the Wapakoneta River shifted westward past Maumee Nation's territories in the 1830s, such presumption would lead to the unwarranted assumption that the whole Maumee Nation territory would turn into United States territory. Such assumptions and outcomes are

[64] *See the Treaty with the Wendat supra.*
[65] *See supra*.
[66] *See* Cong. Globe, 35th Cong., 2nd Sess. 5411-5412 (1859).

contrary to the rule in *McGirt*. If Congress wanted to extinguish the interests of the Maumee Nation in the Topanga Cession, Congress could have done so with express language in a statute as this Court opined in *McGirt* and *Parker*.[67] However, Congress never did state such intentions. Therefore, there is no ambiguity in this case and the Legislative History of The Treaty with the Wendat is not needed to clarify the Treaties.

Further, Congress passed the Maumee Allotment Act of 1908. However, said Allotment Act also lacked language that would appropriately extinguish Maumee Nation's Rights to the Topanga Cession. Likewise, under *McGirt*, the Maumee Allotment Act of 1908 did not extinguish Maumee Nation's rights to the Topanga nation.

In light of the above, Congress must have made explicit references Maumee Nation's rights to the Topanga Cession were extinguished.[68] Since Congress never explicitly extinguished Maumee Nation's rights to the territory, the Topanga Cession remains in possession of the Maumee Nation.

II. SINCE THE TOPANGA CESSION IS MAUMEE NATION TERRITORY, NEW DAKOTA'S NON-DISCRIMINATORY TRANSACTION PRIVILEGE TAX APPLIES TO WENDAT COMMERCIAL DEVELOPMENT CORPORATION.

A state may not infringe upon the right of the Indians to govern themselves unless the State bore the burden associated with it, and as long as the educational and economic status of the Indian permitted the change without disadvantage to the Indians, and Congress

[67] See *McGirt* and *Parker supra*.
[68] *See McGirt supra*.

authorized it.[69] Furthermore, a state may not impose a tax that is preempted by federal or tribal interests.[70]

In *Williams*, the United States Supreme Court held that States must not infringe upon the right of the Indians to govern themselves.[71] In that case, the respondent operated a general store on the Navajo Indian Reservation under a license required by federal statute in the state of Arizona.[72] Said respondent was not from the Navajo Nation.[73] On the other hand, the petitioner was a Navajo Nation Indian who lived on the Navajo Reservation and initially brought that suit to collect goods sold to them on credit.[74] A central issue in that suit was whether Arizona courts were free to exercise jurisdiction over civil suits by non-Indians against Indians for an action arising on an Indian Reservation.[75]

In reaching its decision, that Court pointed out the lack of Federal Acts allowing state court jurisdiction over such controversies.[76] At that time, Congress' intention was to encourage tribal governments and courts to become stronger in order to make all Indian full-fledged participants in American society.[77] Said intention would have allowed for any state to assume jurisdiction over Indians as long as the State bore the burden associated with it, as long as the educational and economic status of the Indian permitted the change without disadvantage to the Indians, and as long as Congress expressly granted the State jurisdiction

[69] *Williams v. Lee*, 358 U.S. 217 (1959). (Hereinafter "*Williams*").
[70] *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). (hereinafter "*Bracker*").
[71] *Williams* at 217.
[72] *Id.* at 217.
[73] *Id.*
[74] *Id.* at 218.
[75] *Id.*
[76] *Id.* at 222.
[77] *Id.* at 220.

over Indians.[78] Since none of the following conditions applied, that Court opined that only Congress had the power to take authority away from the Indians.[79]

In *White Mountain*, the United States Supreme Court held that the imposition of State taxes to a logging company consisting of two non-Indians, but operating solely on an Indian Reservation, were preempted by federal law.[80] In that case, the logging company's activities on the Indian Reservation were subject to extensive federal control due to the logging company being part of a tribal enterprise that was created with federal funds.[81] In that Reservation, timber operations were the most important activities accounting for over 90% of the Reservation's annual profits.[82] As such the revenue used to fund the tribal governmental programs derived from said enterprises.[83]

However, the State of Arizona tried to enforce its motor carrier license and fuel taxes to the logging company.[84] Said taxes applied to each gallon of fuel used in the propulsion of a motor vehicle on any highway within that state.[85] As such, the used fuel tax was assessed on the logging company because it used diesel fuel to propel its vehicles within the Reservation and on the state's highway.[86]

As mentioned above, that Court held against the imposition of the tax on the logging company.[87] In light of the important contribution of the logging company to the reservation,

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[78] *Id.* at 220-221.
[79] *Id.* at 223.
[80] *Bracker* at 140.
[81] *Id.*
[82] *Id.* at 139.
[83] *Id.*
[84] *Id.* at 138.
[85] *Id.* at 141.
[86] *Id.* at 140.
[87] *Id.*

that Court considered the tax as a burden to the Tribe.[88] Not only would such taxes deprive the Reservation from useful funds, but it would also been contrary to federal policies of encouraging the tribe to self-govern and have control over their business and economic affairs.[89] Further, the Supreme Court acknowledged that it was unable to identify a legitimate interest served by the implementation of said taxes on Indian Reservation.[90]

In its reasoning, the Supreme Court refused the claim that a state may assess taxes on non-Indians engaged in commerce on a reservation when there is no congressional statement to the contrary.[91] That Court relied on precedents that established preemption of the state's authority over non-Indians acting on tribal reservations.[92] Notably, that Court referred to a precedent to explain that Congress had great authority over Indian trading practices on reservations and that no room remains for state laws imposing additional burdens upon traders.[93] Thus, since federal legislation did not leave states any duties or responsibilities regarding reservations, that Court did not follow that Congress's intent was to allow States the privilege of levying taxes in Indian Reservation.[94]

Bracker created the Bracker interest-balancing test. However, this Court only applied this test in precedents where the "legal incidence of the tax fell on a non-tribal entity engaged in a transaction with tribes or tribal members."[95] Such limitation is consistent with Indian tax immunity.[96] Furthermore, the Supreme Court recognized that Indians going beyond

[88] *Id.* at 149.
[89] *Id.* at 149-150.
[90] *Id.* at 151.
[91] *Id.*
[92] *Id.* at 152.
[93] *Id.* at 153.
[94] *Id.* at 154.
[95] *See Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95, 110 (2005).
[96] *Id.* at 112.

reservation boundaries may be subject to nondiscriminatory state law otherwise applicable to all citizens within a specific state (internal quotations omitted).[97] Accordingly, a State may also apply a nondiscriminatory tax where the tax is imposed on non-Indians as a result of an off-reservation transaction.[98]

The suit at bar is a unique case. It involves an Indian Entity (the WCDC) which would operate beyond Wendat Band's reservation boundaries. This fact alone suggests that the WCDC may be subject to nondiscriminatory state law's taxes, according to the above-mentioned Supreme Court precedents. However, the legal incidence of New Dakota's TPT falls on a non-Maumee tribal entity engaged in transaction within Maumee Nation's territory. This fact by itself may warrant the application of Bracker's interest-balancing test.

The State of New Dakota's Transaction Privilege Tax (TPT) applies to every person in the state who receives more than $5,000 on transactions commenced in the state. However, paragraph 4 states: "no Indian tribe or tribal business operating within its own reservation on land held in trust by the United States must obtain a license or collect a tax."[99] Consequently, the State of New Dakota must remit the proceeds collected through the TPT collected from all entities operating on a tribe's Reservation to the tribe.[100]

In contrast with *Williams supra*, the TPT does not negatively infringe upon the Maumee Nation's rights to self-govern, nor puts the economic and educational status of the Maumee Nation at a disadvantage. Contrary, the State of New Dakota would bear the burden to collect the TPT from a non-Maumee Nation enterprise and remit the tax on its entirety to the Maumee Nation. As the district court pointed out, the Maumee Nation would use the new

[97] *Id.* at 113.
[98] *Id.*
[99] 4 N.D.C. §212(4).
[100] 4 N.D.C. §212(5).

funds generated by the TPT to "help pay for tribal scholarships and invest in renewable energy and other forms of sustainable economic development to diversify the tribal economy so that it could continue to provide basic services and jobs for Maumee Nation's tribal members."[101] Said application of TPT would also best serve Congress's policies that favor Indian Tribes.

Furthermore, the facts in this case slightly differ from the facts in *Bracker*. In the present case, the non-tribal entity operating the enterprise in the Topanga Cession is another tribe. Said shopping complex would be engaged in transactions within the Maumee Nation. Additionally, the TPT is not the same type of tax as the fuel tax in *Bracker*. The important difference is the TPT provision that imposes New Dakota to remit the taxes collected back to the tribe.[102] This is an important difference because said money would benefit the Maumee Nation by providing additional funds to use for its economic and educational goals.[103]

In light of the above, the State of New Dakota should enforce the TPT tax pursuant to §212(5) because the WCDC is a non-member business operating on Maumee Nation's lands. Under the Bracker interest-balancing test, the TPT does not negatively affect the Maumee Nation to self-govern and have control over their business and economic affairs. Therefore, the Thirteenth Circuit's opinion on infringement and preemption is contrary to well established Supreme Court precedent, such as *Williams* and *Bracker*.

[101] *See Maumee Indian Nation v. Wendat Band of Huron Indians*, 305 F. Supp. 3d 44 (D. New Dak. 2018).
[102] 4 N.D.C. §212.
[103] *See supra.*

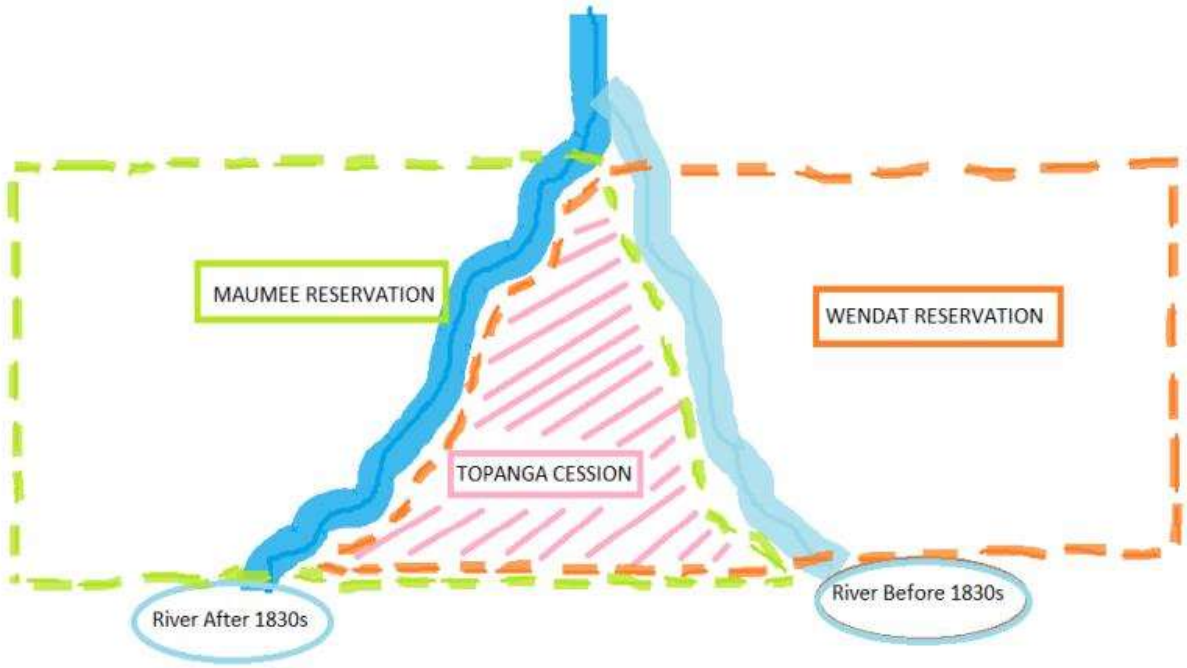
CONCLUSION

In conclusion, the Topanga Cession is a territory of the Maumee Nation due to the lack of Congressional intent to ever extinguish Maumee Nation's rights after the Treaty of Wauseon, as required under *McGirt*. It follows that the Wendat Commercial Development Corporation is a non-tribal entity conducting business in Maumee Nation's Territory. As such, the State of New Dakota's Transaction Privilege Tax applies to the Wendat Commercial Development Corporation, with the levied tax amounting to 3% being remitted back to the Maumee Nation. This tax will be very beneficial to the educational and economic status of the Maumee Nation and the Nation's right to self-govern its territories.

Dated: January 4, 2021 Respectfully submitted

MAP

**Not Drawn to Scale



Appendix 2: The 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.**