No. 20-1104

IN THE
SUPREME COURT OF THE UNITED STATES

SPRING 2021

MAUMEE INDIAN NATION,

Petitioners,

v.

WENDAT BAND OF HURON INDIANS,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Thirteenth Circuit

BRIEF FOR PETITIONERS

Team 1021
Counsel for Petitioners

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

QUESTIONS PRESENTED

I. Was the Maumee Reservation diminished, thereby relinquishing its ownership of the Topanga Cession, by the Treaty with the Wendat or the Maumee Allotment Act where Congress had not clearly expressed or manifested intent to diminish the Maumee Reservation?

II. Can a state collect and remit funds from a tax to an Indian tribe where a corporation owned and operated by a different tribe conducts business on their reservation, despite the doctrines of preemption and infringement?

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

The Maumee Indian Nation (hereinafter "Maumee") and The Wendat Band of Huron Indians (hereinafter "Wendat Band") are both Native American Tribes located in the State of New Dakota. Record on Appeal (hereinafter "ROA") at 4. Both Maumee and Wendat Band have treaties with the United States which reserve them each a set of land. *Id*. The two tribes traditional land claims overlap and their current reservations border on each other. *Id*. The Treaty of Wauseon of 1802 reserves the land west of the Wapakoneta River to Maumee, and The Treaty with the Wendat of 1859 reserves the land east of the Wapakoneta River to the Wendat Band. ROA at 4-5. However, in the 1830s, the Wapakoneta River moved roughly three miles to the west, which created a tract of land in Door Prairie County. ROA at 5. Based on the language of both treaties, both the Maumee and the Wendat Band tribes maintained the exclusive right to this tract of land. *Id*. Both tribes refer to this tract of land as the Topanga Cession (hereinafter "Topanga Cession"). *Id*. Since at least 1937, both tribes

have disputed the ownership of the Topanga Cession, but they refrained from asking a Federal Court to resolve the dispute. *Id*.

Further, the United States subjected both Maumee and Wendat Band to allotment by passing the General Allotment Act. ROA at 5. The Allotment Act allowed the federal government to survey Maumee's reservation into townships. ROA at 13. The Allotment Act also permitted the Maumee Indians to select their individual allotments in the western three-quarters of Maumee's reservation, and any unclaimed land in the western three-quarters is reserved to the Maumee. *Id*. Maumee agreed to consider the eastern quarter as surplus. *Id*. Similarly, the Allotment Act allowed the Wendat Band Indians to pick an allotment in the western half of the Wendat Band's reservation, and all land in the western half that was not selected was declared a surplus. ROA at 15. Given that the eastern quarter of Maumee's reservation and the western half of Wendat Band's reservation were both declared surplus under one of the Allotment Acts, the tribes agree the Topanga Cession consists mostly of land that was declared surplus. ROA at 7. Both tribes agree that no member of either tribe selected an allotment located within the Topanga Cession, and any Indians who live there now either live in a rented accommodation, or they purchased their land from non-Indians, New Dakota, or the United States. *Id*. The following chart indicates the census data in Maumee's reservation, Wendat's reservation, and the Topanga Cession:

	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%

ROA at 7.

On December 7, 2013, the Wendat Band purchased a 1,400-acre plot of land located within the Topanga Cession from non-Indian owners. ROA at 7. On June 6, 2015, the Wendat Band announced their plan to build a combination of a residential and commercial development on this plot of land. *Id*. The plan for this development included public housing for low-income tribal members, a nursing and care facility for the elderly, a tribal cultural center, a tribal museum, and a shopping complex. *Id*. The shopping complex would include a café serving traditional Wendat food, a grocery store that would sell fresh and traditional food, a salon and spa, a bookstore, and a pharmacy. ROA at 8. The shopping complex would be owned by the Wendat Commercial Development Corporation (hereinafter the "WCDC"), which is a corporation owned by the Wendat Band. ROA at 7-8.

On November 4, 2015, Maumee representatives approached the WCDC and the Wendat Band's tribal council and informed them that Maumee considers the Topanga Cession to be Maumee's land. ROA at 8. Maumee's representatives told the WCDC and the Wendat Band's tribal council that the dispute regarding ownership of the Topanga Cession was resolved when Wendat Band's reservation was diminished by the Allotment Act. *Id*.

Accordingly, Maumee informed Wendat Band that they expect the shopping complex to pay the State of New Dakota the 3.0% Transaction Privilege Tax (hereinafter the "TPT) because the WCDC is a nonmember business operating on Maumee land. *Id.* A TPT tax is levied on the gross proceeds of sales or income of a business, and it is for the privilege of doing business in that state. ROA at 5. The State of New Dakota's TPT statute reads as follows:

> 4 N.D.C. §212 Provides:
>
> (1). Every person who receives gross proceeds of sales or gross income of more than $5,000 on transactions commenced in this state and who desires to engage or continue in business shall apply to the department for an annual Transaction Privilege Tax license accompanied by a fee of $25. A person shall not engage or continue in business until the person has obtained a Transaction Privilege Tax license.
>
> (2). Every licensee is obligated to remit to the state 3.0% of their gross proceeds of sales or gross income on transactions commenced in this state. Licensees with more than one physical location must report which tax came from which location so the proceeds can be appropriately parceled out to local partners.
>
> (3). The proceeds of the Transaction Privilege Tax are paid into the state's general revenue fund for the purpose of maintaining a robust and viable commercial market within the state including funding for the Department of Commerce, funding for civil courts which allow for the expedient enforcement of contracts and collection of debts, maintaining roads and other transport infrastructure which facilitate commerce, and other commercial purposes.
>
> (4). In recognition of the unique relationship between New Dakota and its twelve constituent Indian tribes, 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.
>
> (5). In further recognition of this relationship, the State of New Dakota will remit to each tribe the proceeds of the Transaction Privilege Tax collected from all entities operating on their respective reservations that do not fall within the exemption of §212(4). While the Department of Revenue recognizes that each Tribe could collect this tax itself, the centralization of collection and enforcement by the State of New Dakota is the most efficient means of providing these funds to tribes.
>
> (6). Door Prairie County. In recognition of the valuable mineral interests given up by the Maumee Indian Nation, half of the Transaction Privilege Tax collected from all businesses in Door Prairie County that are not located in Indian country (1.5%) will be remitted to that tribe.
>
> (7). The failure to obtain a license or pay the required tax is a class 1 misdemeanor.

ROA at 5-6.

The Wendat Band's tribal council and the WCDC told the Maumee representatives that they disagreed, and they believe the Topanga Cession was a part of the Wendat Band's reservation pursuant to the Treaty with the Wendat of 1859. *Id.* Additionally, Wendat Band agreed that the land they purchased in the Topanga Cession has not been taken into trust and it is therefore Indian fee land, but that they do not believe New Dakota can collect the TPT because it is in Indian country and therefore the authority to collect the tax is preempted by federal law or infringes upon the Wendat Band's own sovereign powers. *Id.*

The Maumee representatives explained to the Wendat Band that Maumee needs the TPT funds because sustainable timber harvesting, which is their largest source of revenue, was threatened by climate change. ROA at 8. Maumee also informed Wendat Band that the money generated by the TPT will be used to pay for tribal scholarships, invest in renewable energy, and to diversify the tribal economy to provide services and job opportunities for tribal members. *Id.* Additionally, Maumee pointed out that the Maumee member's average income is 25% lower than that of a Wendat Band's member, and this additional tax revenue would help improve the economic status of many of the Maumee's members, which would subsequently allow them to utilize the goods and services offered at the shopping center. *Id.* Unpersuaded, the Wendat Band insisted that the Topanga Cession belonged to them, and New Dakota lacks the authority to collect the TPT. *Id.*

II. STATEMENT OF PROCEEDINGS

On November 18, 2015, Maumee filed their complaint against the Wendat Band with the United States District Court for the District of New Dakota. ROA at 8. In Maumee's complaint, they asked the District Court to find that the Topanga Cession is located on

Maumee's land, so the development by the WCDC is required to procure a TPT license and pay the tax. *Id*. Alternatively, if the District Court does not find that the Topanga Cession is located on Maumee's land, then Maumee asks the District Court find that the Topanga Cession is not located within Indian country at all, so one-half of the TPT should still be remitted to Maumee. *Id*.

United States District Court for the District of New Dakota granted Maumee's declaration and held that the Topanga Cession is a part of Maumee's land that was reserved to them by the Treaty of Wauseon. ROA at 9. The District Court reasoned that land retains its reservation status until Congress says otherwise, and there is no evidence that supports the finding of an intent to abrogate the Treaty of Wauseon or intent to dimmish Maumee's reservation. *Id*. Additionally, the District Court held that New Dakota can levy the TPT in the Topanga Cession. *Id*.

Wendat Band filed their appeal with the United States Court of Appeals for the Thirteenth Circuit. ROA at 10. A divided Thirteenth Circuit reversed the District Court's decision and found that Maumee's reservation was diminished, Wendat Band's reservation remained intact, and the Topanga Cession is located in Indian country on Wendat Band's reservation. *Id*. Further, the Thirteenth Circuit held that the imposition of the TPT infringes on tribal sovereignty and should be subject to Indian preemption. ROA at 11. One Thirteenth Circuit Judge, Judge Lahoz-Gonzales, wrote a separate opinion concurring in part and dissenting in part. *Id*. Judge Lahoz-Gonzales opined that both tribes' reservations were diminished, and the Topanga Cession is not located in Indian Country. *Id*. On November 6, 2020, this Court granted Maumee's petition for writ of certiorari to address the following issues: 1. Did the Treaty with the Wendat abrogate the Treaty of Wauseon and/or did the

Maumee Allotment Act of 1908 P.L. 60-8107 (May 29, 1908) diminish the Maumee Reservation? If so, did the Wendat Allotment Act., P.L. 52-8222 (Jan. 14, 1892) also diminish the Wendat Reservation or is the Topanga Cession outside of Indian country? and 2. (2) Assuming the Topanga Cession is still in Indian country, does 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? ROA at 1-3.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Thirteenth Circuit was entered. Petitioners writ of certiorari was granted on November 6, 2020. This court has jurisdiction under 28 U.S. Code § 1254(1).

SUMMARY OF THE ARGUMNET

As to the first issue, this Court should reverse the holding of the Thirteenth Circuit when it erred in ruling that the Treaty with The Wendat caused the Maumee Reservation to become diminished and therefore, the Maumee's claim to the Topanga Cession was abrogated. The Thirteenth Circuit also erred when it concluded that the Wendat Reservation was not diminished and, thus, the Topanga Cession is located on the Wendat Reservation.

The Maumee Band maintains the Topanga Cession area under its reservation which was granted to them in negotiations by Congress in the Treaty of Wauseon of 1801. The treaty declares that the Maumee land consists of "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." Treaty of Wauseon, Oct. 4, 1801, 7 Stat. 1404. The Treaty with The Wendat outlines the Wendat land as lands east of the Wapakoneta River. Treaty with the Wendat, March 26, 1859, 35 Stat. 7749. Over time, and before the Treaty with The

Wendat was passed, the river Wapakoneta moved approximately three miles to the west. ROA at 5. This movement left a tract of land, now called the Topanga Cession, in dispute as to ownership between the tribes.

First, the Thirteenth Circuit erred when it ruled that the Treaty with The Wendat caused the Maumee Reservation to become diminished and that their claim to the Topanga Cession was abrogated. This Court in *McGirt v. Oklahoma* asserted that "[t]he Constitution, which entrusts Congress with the authority to regulate commerce with Native Americans, and directs that federal treaties and statutes are the "supreme Law of the Land." *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2462 (2020). Since Congress holds this power, "[o]nly Congress can divest a reservation of its land and diminish its boundaries." *Solem v. Bartlett*, 465 U.S. 463, 470, (1984).

Second, the Maumee Reservation was not diminished by its own Allotment Act of 1908 because any unclaimed lands were to be held in reserve for the Maumee Band. Using the three-part framework that this Court in *Solem* developed, this court should, first, examine the text of the Maumee Allotment Act for express wording that purportedly disestablishes or diminishes the reservation. Second, look at events surrounding the passage of the Maumee Allotment Act to determine any intention by Congress to diminish the Maumee Reservation, and finally, third, although not heavily relied on, events that occurred after the passage of the Maumee Allotment Act can be looked at, such as in the population changes in the census compiled by the tribes.

Finally, in the alternative, even if the Maumee Reservation became diminished, the Wendat Reservation also became diminished by its Wendat Allotment Act of 1892 thereby reinforcing the fact that the Topanga Cession remains as the Maumee Nation's land. The

census can also be used to derive evidence of this as well as the legislative history of the Treaty with the Wendat.

As to the second issue, this Court should reverse the decision of the Thirteenth Circuit because it erred in deciding that both preemption and infringement prohibit the State of New Dakota from imposing its Transaction Privilege Tax on the Wendat Band's shopping complex.

First, neither federal nor tribal interests preempt the tax in question. For federal or tribal interest to preempt a state tax, it must interfere with or be incompatible with tribal interests as they are reflected in federal law. While typically, Indian tribes enjoy tax immunity, this immunity does not apply when Indian tribes operate outside their own reservation. States may impose non-discriminatory taxes that are otherwise applicable to all other members of the state. Additionally, states may impose taxes on nonmembers operating on an Indian reservation. This Court has found that Indian tribes that operate on another tribe's reservation holds the same status as a non-Indian. Even further, the tax does not impose an economic burden on Maumee, the tribe whose land the Wendat Band seeks to conduct business on. Even if the state lacked the authority to impose the tax, the state merely acts as an intermediary to collect and remit the tax back to the tribe. Based on principles of tribal sovereignty, the Maumee tribe has the authority to tax members and nonmembers conducting business on their reservation. The state merely acts to collect the tax for the tribe for the sake of centralization and efficiency. For these reasons, this tax is not inconsistent with tribal interests as reflected in federal law, and therefore the tax is not preempted.

Second, the tax does not infringe on tribal sovereignty. The tax does not infringe of the sovereignty of either the Maumee or Wendat Band tribes. State action infringes on tribal

sovereignty where the state violates the tribe's right to make their own laws or be ruled by them. In this case, the tax does not infringe on the Wendat Band's right to make their own laws because the Wendat Band's shopping complex conducts business on Maumee's land, which outside their own Indian country, where they do not have the right to make their own laws. Further, the tax does not infringe on Maumee's sovereignty because it does not preclude the tribe from enforcing and collecting the tax itself.

Lastly, as a matter of policy, the Maumee tribe should receive the funds generated by taxing a Wendat Band shopping complex on their reservation. Indian tribes are one of the most economically disadvantaged populations, and Maumee's tribal members' income is about 25% less than that of a Wendat Band member. Maumee needs the revenue generated by this tax to invest back into their economy.

ARGUMENT

I. THE TOPANGA CESSION REMAINS PART OF THE MAUMEE NATION'S LAND BECAUSE NEITHER THE TREATY WITH THE WENDAT NOR THE MAUMEE ALLOTMENT ACT DIMINISHED THE MAUMEE RESERVATION THEREBY LEAVING THE MAUMEE NATION'S BOUNDARIES UNMOVED

A. The Maumee Reservation Was Not Diminished By The Treaty With The Wendat Of 1859 Because Congress Did Not Expressly Diminish The Maumee Land When It Made Its Treaty With The Wendat Band

This court should find that the Maumee Reservation was not diminished by the Treaty with the Wendat since these lands can only be diminished by expressed authorization by Congress. "Only Congress can divest a reservation of its land and diminish its boundaries." *Solem*, 465 U.S. at 470; *McGirt*, 140 S. Ct. at 2462; *Nebraska v. Parker*, 136 S. Ct. 1072, 1078 (2016). In *Solem*, this Court has stated that "Once a block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise. *Solem*, 465 U.S. at 470 (citing *United States v. Celestine*, 215 U.S. 278, 285 (1909)). Congress has the power:

> [T]o abrogate the provisions of an Indian treaty . . . such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so.

Lone Wolf v. Hitchcock, 187 U.S. 553, 566, (1903).

"Congress can do so, but its intent "must be 'clear and plain.'" *Murphy v. Royal*, 875 F.3d 896, 918 (10th Cir. 2017) (citing *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998) (quoting *United States v. Dion*, 476 U.S. 734, 738-39 (1986)). For example, in *McGirt*, petitioner McGirt challenged the State's authority over him for a crime committed on the Creek reservation which the State claimed Congress had disestablished during the

'allotment era.' *McGirt*, 140 S. Ct. at 2459. The Court recognized that Congress believed that "the reservation system would cease within a generation," but the Court stated that "once a reservation is established, it retains that status "until Congress explicitly indicates otherwise." *Id.* at 2468.

In the present case, the Thirteenth Circuit incorrectly decided that the Treaty with the Wendat abrogated the Maumee's claim to the Topanga Cession territory. ROA at 10. The Treaty with the Wendat, signed in 1859, provided the description of land that was ceded and land that was to remain with the Wendat Band. Land that was to remain with the Wendat Band would primarily be east of the Wapakoneta River. Treaty with the Wendat, March 26, 1859, 35 Stat. 7749. In Article III of the Treaty of Wauseon, the Maumee describe their land as on "the western bank of the river Wapakoneta . . . ." Treaty of Wauseon, Oct. 4, 1801, 7 Stat. 1404.

Looking at the legislative history of the Treaty with the Wendat, congressmen focused on opening up the soon to be ceded lands to new settlements. Legislative History of the Allotment Acts, Jan. 14, 1892, 23 Cong. Rec. 1777. The Wendat Band were to be compensated for their surrendered land and there were discussions for the U.S. to acquire more Wendat land. *Id.* The Wendat land was promising to new communities and Congressman Chesnut Jr. assured that new settlers were going to make use of the lands without "unwanted Indian intrusion." *Id.* This speak of opening up of Wendat territory to new settlement made no reference to the Maumee territory. "When . . . legislative history fail to provide substantial and compelling evidence of a congressional intention to diminish Indian lands, we are bound by our traditional solicitude for the Indian tribes to rule that

diminishment did not take place and that the old reservation boundaries survived the opening." *Solem*, 465 U.S. at 472.

The Court in *Minnesota v. Mille Lacs Band of Chippewa Indians* stated, "we interpret Indian treaties to give effect to the terms as the Indians themselves would have understood them." *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196, (1999). Although there are two treaties in discussion here that share the same boundaries in conflict, the Court's statement in *Mille Lacs Band*, where the petitioner claimed that an 1855 treaty with the Chippewa abrogated an 1837 treaty with the same tribe, may apply here, "There must be "clear evidence that Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty." *Mille Lacs Band of Chippewa Indians*, 526 U.S. at 202-03.

Here in this case, if Congress intended that the later treaty (with the Wendat Band) abrogated the earlier treaty (with the Maumee), evidence of this cannot be interpreted by the Treaty with the Wendat nor did Congress amend the Treaty with the Wendat. It bears repeating that "the Indian Nations did not seek out the United States and agree upon an exchange of lands in an arm's length transaction. Rather, treaties were imposed upon them and they had no choice but to consent." Barbara McAuliffe, *Stolen or Lawful? A Case Review of an Indian Tribe's Claim to Aboriginal Land in California*, 49 Cal. W. Int'l L.J. 1 (2018). Here, the Maumee did not ask for a treaty and given that there was no support to the lower court's ruling about moving the Maumee border or diminishing the Maumee reservation by the passing of the Treaty with the Wendat, this court should find that the Maumee Reservation was not diminished by the Treaty with the Wendat of 1859.

B. The Maumee Reservation Was Not Diminished By Its Allotment Act Of 1908 Because Any Unclaimed Lands Were To Be Held In Reserve For The Maumee Band

"Allotment on its own does not disestablish or diminish a reservation." *Murphy*, 875 F.3d at 919. This Court has developed a three-part framework, the *Solem* factors from *Solem v. Bartlett*, to differentiate between congressional acts that changed a reservation's borders from those "that simply offered non-Indians the opportunity to purchase land within established reservation boundaries." *Id.* at 920. In determining Congress' intent to change boundaries, first, the court examines the text of the statute that supposedly disestablishes or diminishes the reservation. Second, the court looks at "events surrounding the passage" of the statute, and finally, third, although not heavily relied on, "events that occurred after the passage" of the relevant statute. *Id.*

In *Solem*, the respondent challenged state court's jurisdiction over him when the state tried him for a crime that he allegedly committed on the Sioux Reservation, however, the state contended that the Cheyenne River Act of May 29, 1908, which opened up the reservation to settlement by non-Indians, divested the land of its Indian status. The Court held that the Cheyenne River Act did not diminish the boundaries of the reservation but permitted non-Indians to settle within existing reservation boundaries. *Solem*, 465 U.S. at 481.

In the first part of the *Solem* framework, the Court looked to the text of the Cheyenne River Act and concluded that there was no explicit language showing congressional intent to diminish Sioux land. The Cheyenne River Act's language, "sell and disposition" and "deposited to the Treasury" to create accounts for the Sioux, implied that the Act was to open up Sioux lands to non-Indian settlers to own reservation land while the U.S. government

acted as trustee for the sale and deposit of sales to the Sioux. *Id.* at 473. In the second part of the framework, the Court concluded, that by looking at the events surrounding the passage of the Cheyenne River Act, that there was no intent by either the governmental inspector's meeting with the tribe (in which there were not enough tribal members for a vote), tribal members (members had yet to submit their vote 14 days later), or Congress (floor debates comprised mostly of payments to the Sioux for the opened lands and no mention of any boundaries changes) to change the reservation's boundaries. *Id.* at 477. Finally, in the third part, for events that occurred after the passage, there have been contradictory references by Congress, state, and federal courts that refer to the lands as "surplus and unallotted" and "the former" Sioux Reservation leaving the Court to decide that Congress did not intend to diminish the reservation's boundaries. *Id.* at 479. Furthermore, the lands in question have been inhabited equally by both Indians and non-Indian homesteaders. *Id.* at 480.

Additionally, the Court in *Seymour v. Superintendent of Wash. State Penitentiary*, where the petitioner claimed that his alleged crime was committed on the Colville Indian Reservation while the state claimed that that portion of the reservation was diminished and therefore, had jurisdiction over him, stated that:

> [T]he purpose of the 1906 [Allotment] Act was neither to destroy the existence of the diminished Colville Indian Reservation nor to lessen federal responsibility for and jurisdiction over the Indians having tribal rights on that reservation. The Act 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.

Seymour v. Superintendent of Wash. State Penitentiary, 368 U.S. 351, 356 (1962).

i. Statutory language used in the Maumee Allotment Act to open the Indian lands

By applying the *Solem* factors in the present case, first, this court should examine the text of the statute that supposedly disestablishes or diminishes the reservation. This analysis carries the most weight, as explained in *McGirt*. "[W]hen interpreting Congress's work in this arena, no less than any other, our charge is usually to ascertain and follow the original meaning of the law before us." *McGirt*, 140 S. Ct. at 2468.

In examining the text of the Allotment Act for the Maumee, this court will find that explicit language demonstrating that the Maumee agreed to cede and relinquish its reservation cannot be found. First, the Act was to "authorize the allotment, sale, and disposition of the eastern quarter of the Maumee Indian Reservation … ." (ROA at 13) which is similar to the Homesteading Act in *Solem* where the Court stated, "[r]ather than reciting an Indian agreement to "cede, sell, relinquish and convey" the opened lands, the Cheyenne River Act simply authorizes the Secretary to "sell and dispose" of certain lands." *Solem*, 465 U.S. at 473. Here, the Maumee's Allotment Act contained similar provisions.

Second, Sec. 1 of the Maumee Allotment Act explains that the Federal government will survey the Maumee land and allow the Maumee to pick allotments of land within the western three-quarters of the reservation and any unallotted lands will be reserved for the Maumee. ROA at 13. The Thirteenth Circuit erroneously concluded that the allotment act showed congressional intent to conclude that the Maumee reservation has been diminished (ROA at 11), and although Sec. 1 of the Act states "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," this does not indicate that the Maumee agreed to cession of their territory, but that they have agreed to *consider* it. ROA at 13.

Furthermore, in *Solem*, the Court added, "This reference to the sale of Indian lands, coupled with the creation of Indian accounts for proceeds, suggests that the Secretary of the Interior was simply being authorized to act as the Tribe's sales agent." *Solem*, 465 U.S. at 473. The Maumee Allotment Act was to allot and open portions of the Maumee land and where lands were opened, payments would be made to the Treasury on behalf of the Indians. ROA at 13. Like in *Solem* and *Seymour*, the U.S. government would act as the tribe's "sales agent" and "guardian and trustee." *Solem*, 465 U.S. at 473; *Seymour*, 368 U.S. at 356. Other language from the Act allowed the Secretary of the Interior to use his discretion to permit the Maumee to relinquish their allotment and receive eight-hundred dollars in return and to reserve sections sixteen and thirty-six in each township for schools. ROA at 13. Other than the reserved sections for schools, the allotments, the sale of opened lands, and the Maumee's option to relinquish any allotments, there was no explicit language demonstrating that the Maumee agreed to cede and relinquish its reservation rights.

ii. History of events surrounding the passage of the Maumee Allotment Act

Second in applying the *Solem* factors, this court should look for "events surrounding the passage" that of the Act that "unequivocally reveal a widely held, contemporaneous understanding that the affected reservation would shrink as a result of the proposed legislation." *Solem*, 465 U.S. at 471. The Court in *Solem* stated that if diminishment was found, the court has been "willing to infer that Congress shared the understanding that its action would diminish the reservation." *Id.*

Here, in looking at the legislative history of the Maumee Allotment Act, congressmen discussed the surveying and allotting of the Maumee lands. ROA at 13. However, they also discussed the sale of surplus lands and sections that were to be reserved for agency and

school purposes. ROA at 13. Furthermore, the congressmen expected that the surplus lands would be opened to settlement so that the incoming homeowners and homebuilders would influence the Indians to become citizens. Herein is the expectation that the Indians would stay and become assimilated. The opened lands would be sold, and with the federal government acting as trustee for the Indians, and to pay the proceeds of the sales to the tribe. Opened lands may be still be considered 'Indian Country." However, the Court in *Solem* stated, "Unfortunately, the surplus land Acts themselves seldom detail whether opened lands retained reservation status or were divested of all Indian interests." *Solem,* 465 U.S. at 468. 'Indian Country' is defined as:

> a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

18 USCS § 1151 (2018).

The discussions surrounding the passage of the Maumee Allotment Act refer to the "protection of the rights . . . general welfare and the advancement of the Indians." ROA at 13. Discussions further state that "after surplus lands are disposed of . . . the balance of moneys shall be paid into the Treasury . . . and placed to the credit of the Indians." ROA at 13. The discussions here demonstrate congressional intent that favors the Indians staying and becoming assimilated within their lands, rather than their lands being diminished.

iii. Events that occurred after the passage of the Maumee Allotment Act

Finally, third, the *Solem* Court has looked to, although with less weight, subsequent events that occurred after the passage of the Allotment Act for the Maumee in determining

Congress' intent to change boundaries. In the present case, the lack of subsequent events by Congress leads the court instead to look at the population makeup of both Maumee and Wendat reservations, during and after the Allotment Acts went into effect. Both the Maumee and the Wendat tribes compiled demographic data to create a census record that detailed the percentage of persons who identified as American Indian/Native Alaskan. ROA at 7. At least up until the passage of the General Allotment Act in 1887, both reservations maintained a solid population of American Indians on their respective lands. *Id.* It was not until after the Maumee Allotment Act was passed in 1908, that the percentage of Maumees living on the Maumee Reservation and within the Topanga Cession had declined. *Id.* This was expected, however, since the Allotment Act allowed some Maumee lands to be opened to settlement, including the area known as the Topanga Cession. ROA at 13.

In contrast, however, after the Wendat Allotment Act was passed (1892), the percentage of American Indians on the Wendat Reservation declined substantially while the Maumee Reservation, along with the Topanga Cession area, remained relatively stable. ROA at 7. Once the Maumee Allotment Act was signed in 1908, the percentage of American Indians on the Maumee Reservation, along with the Topanga Cession area, began to slowly decline almost simultaneously. From these facts, it can be inferred that Congress had not intended to change reservation boundaries.

In general, the Allotment Era had two goals: (1) assimilate . . . individual Indians into the white "yeoman farmer" ideal and (2) open "extra" Indian land within reservations to white homesteaders and settlers by forcing the sale of much of the euphemistically called "surplus" Indian lands . . . to non-Indian homesteaders and purchasers. Jessica Shoemaker, *Emulsified Property*, 43 Pepp. L. Rev. 945, 955 (2016). This court should find that because

both reservations maintained a solid population of American Indians on their respective lands, well after the passage of both treaties, neither the Treaty with the Wendat nor the Treaty of Wauseon diminished the Maumee's lands.

C. In The Alternative, Even If The Maumee Reservation Became Diminished, The Wendat Reservation Also Became Diminished By Its Wendat Allotment Act Of 1892 Thereby Reinforcing The Fact That The Topanga Cession Remains As The Maumee Nation's Land

If this court does find that the Maumee Reservation has been diminished, the court should notice that there is no evidence by the Bureau of Indian Affairs showing which tracts of land were sold or settled. ROA at 7. On the other hand, an analysis of the census record compiled by the Maumee and the Wendat Band shows that the terms of the Wendat Allotment of 1892 caused the diminishment of the Wendat Reservation. After the Wendat Allotment Act was passed (1892), the census record reveal that the percentage of American Indians on the Wendat Reservation declined substantially. *Id.*

In 1890, the population of American Indians on the Wendat Reservation was 96.90% while the subsequent census in 1900 counted American Indians on the Wendat Reservation at 22.50%. *Id.* The Wendat Allotment Act allowed for the Wendat Band members to pick an allotment for themselves and any land that was not selected as an allotment would be declared as surplus land and subject to settlement. ROA at 15. Furthermore, the legislative history of the Allotment Act tells of congressmen urgently looking to pass the Act in order to quickly open up lands, of almost half of the Wendat lands, to patiently waiting settlers. Legislative History, Jan. 14, 1892 at 1777. Also, the legislative history of the Treaty with the Wendat explains that fewer Indians were found near the Wapakoneta River, on the Wendat Band side, and therefore, those less populous lands must be opened to settlement. *Id.* From the text, the surrounding circumstances, and the decline in the Wendat Band population on

the Wendat reservation after the passage of the Wendat Allotment Act, this court should find that the Wendat Reservation became diminished by the Wendat Allotment Act of 1892 thereby reinforcing the fact that the Topanga Cession remains as the Maumee's land.

II. NEITHER THE DOCTRINE OF INDIAN PREEMPTION NOR INFRINGMENT PREVENT THE STATE OF NEW DAKOTA FROM COLLECTING ITS TRANSACTION PRIVILEGE TAX AGAINST WENDAT BAND'S CORPORATION BECAUSE IT PLANS TO OPERATE ON MAUMEE LAND, WHICH IS OUTSIDE OF ITS OWN RESERVATION

A. The Doctrine of Indian Preemption Does Not Prohibit the State of New Dakota From Imposing Their Transaction Privilege Tax

This Court should reverse the decision of the Court of Appeals for the Thirteenth Circuit because neither preemption nor infringement prohibit the state from imposing the tax in question. The District Court correctly found that the Topanga Cession is part of the land reserved by the Maumee tribe, and the Wendat Band purchased fee land to operate a business on Maumee's land. Because the WCDC, a non-Maumee tribal entity, plans to operate a business on Maumee's land, the State of New Dakota will collect 3.0% percent of the gross proceeds pursuant to 4 N.D.C. § 212 and remit it back to the Maumee tribe.

i. States Can Impose Taxes on Indians Operating Outside of Their Reservation

The first issue is whether federal or tribal interests preempt the State of New Dakota from collecting and remitting 3.0% of the gross proceeds from the WCDC's business pursuant to 4 N.D.C. § 212. The tax is not preempted by federal law because Indian tribes do not enjoy tax immunity when acting outside of their reservation.

First, there is no rigid rule by which to resolve the question of whether a state law applies to an Indian reservation or to tribal members. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980). State jurisdiction is preempted by federal law if it

interferes with or is incompatible with federal and tribal interests reflected in federal law. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983). Generally, when the issue only involves on-reservation conduct of Indians, state law is inapplicable because the state's interest in regulating is minimal, and the federal interest in encouraging tribal self-governance is strongest. *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 464 (1976). The preemption test requires analysis of congressional intent, including the relevant state, federal, and tribal interests, including tribal sovereignty and independence. *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 164 (1989); see also *Bracker*, 448 U.S. at 142 (this Court used several factors to analyze the implication of a state tax, including the degree of federal regulation involved, the respective government interests, and the provision of tribal or state services to the party the state seeks to tax).

It is consistent with this Court's precedent to impose a tax on an Indian tribe operating outside of their reservation because it does not conflict with federal law and therefore does not preempt the tax. See *Wagnon v. Prairie Band Potowatomi Nation*, 546 U.S. 95, 97 (2005) (this Court held that a state may apply a nondiscriminatory tax to Indians who have gone beyond the reservation's boundaries). The federal and tribal interest in question is tax immunity. However, Indian tribes and their members only enjoy tax immunity while operating within their reservation, and tribal activities conducted outside the tribe's reservation are subject to non-discriminatory state laws that apply to all other citizens of the state. See *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-89 (1973) (this Court held that New Mexico could impose a nondiscriminatory gross receipts tax on a ski resort operated by an Indian tribe off their reservation because, absent express federal law to the

contrary, Indians going beyond reservation boundaries are subject to non-discriminatory state law otherwise applicable to all citizens of the state). In *Jones*, this Court declined to imply an expansive immunity from ordinary taxes that businesses throughout the state are subject to. *Id*. at 157. When Indians act outside of their own Indian country, including within the Indian country of another tribe, they are subject to any non-discriminatory state laws that are otherwise applicable. *Id*. at 148-49. This Court reasoned that tax exemptions are not granted by implication, and legislative history does not support an expansive tax immunity because several provisions that included an expansive tax immunity for Indians were dropped before Congress passed the bill. *Id*. at 157-58. While the Wendat Band purchased fee land in Indian country, the land is located beyond the boundaries of the Wendat Band's reservation, therefore they may not enjoy tax immunity. *Id*. at 148. Given that the Wendat Band acquired a parcel of land on Maumee's reservation, 25 U.S.C. § 5108 provides that any lands or rights acquired by an Indian tribe shall be taken in the name of the United States in trust for the Indian tribe or individual Indian, and such lands or rights shall be exempt from State and local taxation. See 25 U.S.C. § 5108 (1934). However, this Court interpreted the language of 25 U.S.C. § 5108, on its face, to mean that the statute exempts the purchase of the land from state or local taxation, not income derived from the land's use. *Jones*, 411 U.S. at 155-56. In this case, 4 N.D.C. § 212 imposes a tax on income derived from the Wendat Band's use of the land, so it is similarly not exempt from state taxation.

Additionally, states may impose taxes on nonmembers conducting business on an Indian reservation. As this Court stated in *Cotton Petroleum Corp.*, 490 U.S. at 171, states have a valid interest in imposing taxes on nonmembers and non-Indians conducting business on the reservation. In *Cotton Petroleum Corp*, a non-Indian oil and gas company operated on

an Indian reservation. *Cotton Petroleum Corp*., 490 U.S. at 171. In *Cotton Petroleum Corp.*, both the reservation's Tribe and the State of New Mexico imposed a severance tax on the oil and gas company, and the tax applied to all producers throughout the state. *Id*. This Court held that these state taxes are not preempted by federal law. *Id*. at 164. This Court reasoned that for preemption to prohibit the state tax, the state tax must have an adverse impact on tribal interests. *Id*. at 172. This Court acknowledged that pursuant to *McCulloch v. Maryland*, 4 Wheat. 316, 4 L.Ed. 578 (1819), states cannot tax the United States directly and Indian tribes share this tax immunity when the United States holds reservation lands in trust for said tribe. *Id*. at 175. See also *Montana v. Blackfeet Tribe*, 471 U.S. 759, 764 (1985). However, a state can impose a nondiscriminatory tax on private parties with whom the United States or an Indian tribe does business, even if the financial burden of the tax falls on the United States or the tribe. *Cotton Petroleum Corp.*, 490 U.S. at 175. Further, this Court concluded that because congressional intent and the purpose of the legislation surrounding the severance tax in question was to provide Indian tribes with badly needed revenue and the tax imposed no economic burden on the tribe, the state tax is not preempted by federal law. *Id*. at 180.

Similarly, in the case at bar, federal law does not preempt the State of New Dakota's Transaction Privilege Tax, 4 N.D.C. § 212 because no economic burden is imposed on the Maumee tribe, and it does not conflict with federal law granting tax immunity because the Wendat Band operates on Maumee land as a nonmember. Nonmember Indians residing or conducting business on another Indian tribe's reservation holds the same position as a non-Indian. See *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980) (this Court held that nonmembers of the reservation's respective tribe held the same status as a non-Indians because otherwise, tribes use their special tax status to market a

tax exemption). As this Court held in *Cotton Petroleum Corp*., a state can impose a nondiscriminatory tax on private parties with whom the United States or an Indian tribe does business. *Cotton Petroleum Corp.*, 490 U.S. at 175. In this case, 4 N.D.C. § 212 applies in a non-discriminatory manner to every business that operates in the state and generates more than $5,000. Additionally, akin to the severance tax in *Cotton Petroleum Corp*, 4 N.D.C. § 212 does not impose an economic burden on the tribe. The proceeds from 4 N.D.C. § 212 go into the state's general revenue fund, and the state uses the funds to maintain a healthy commercial market by funding the Department of Commerce, civil courts who enforce contract disputes and debt collection, maintaining roads to facilitate commerce, and other commercial purposes. However, 4 N.D.C. § 212 provides an exception for Indian tribes: no Indian tribe or tribal business operating on their *own* reservation held in trust by the United States is subject to 4 N.D.C. § 212, therefore it does not place an economic burden on the tribe. Because the WCDC chose to operate on land reserved for the Maumee tribe rather than their own, the Wendat Band may not enjoy the exception explicitly provided for Indian tribes. Further, as discussed in *Cotton Petroleum Corp*., for preemption to prohibit the application of this tax, 4 N.D.C. § 212 must have an adverse impact on the tribe. In this case, it is the complete opposite. 4 N.D.C. § 212 has a positive impact on the tribe because the State of New Dakota remits any tax collected though 4 N.D.C. § 212 from a business operating on any tribe's reservation back to the respective tribe. Based on these similarities, it is consistent with this Court's precedent to find that federal law does not preempt 4 N.D.C. § 212.

In *White Mountain Apache v. Bracker*, this Court addressed the issue of non-Indian corporations who conducted business on an Indian reservation. *Bracker*, 448 U.S. at 137-38.

This Court found that two state taxes, a motor carrier license tax and an excise or use fuel tax, could not be imposed on a non-Indian company operating exclusively on the Fort Apache Reservation. *Id*. at 152. This Court reasoned that the tax could not be imposed because the economic burden of the state tax would be imposed on the tribe. *Id*. at 148. Additionally, this Court reasoned that the state did not identify any regulatory function or service performed by the state that would justify the assessment of taxes for activities performed exclusively on the tribal reservation. *Id*. at 148-49. Based on this reasoning, this Court found that federal and tribal interests preempted the motor carrier license tax and an excise or use fuel tax. *Id*. at 149.

While this Court found that federal and tribal interests preempted the state taxes in *Bracker*, this case differentiates from *Bracker*. In *Bracker*, the non-Indian company contracted with the United States to harvest timber for the profit of the Indian tribe whose reservation they conducted business on. *Id*. at 138. This Court found the taxes were barred based on preemption because the imposition of those taxes would threaten the goal for the Indian tribe to receive the benefit of the profit the non-Indian company generated using their land. *Id.* at 149. In this case, the issue is whether federal or tribal interests preempt the state from collecting a tax against the WCDC, an Indian corporation, operating outside their reservation's boundaries for their own profit, rather than a non-Indian company operating for the profit of the tribe whose reservation they conduct business on. Further, in this case, the State of New Dakota remits the tax collected in Indian country back to the reservation's tribe, and therefore the respective tribe does not suffer an economic burden. While this Court found tribal economic interests preempt state tax law in *Bracker*, the factual discrepancies between

Bracker and this case as well as the difference in the issues presented do not support a similar finding.

While the issue this case presents is unique, it is consistent with this Court's precedent to impose a non-discriminatory tax on a tribe that conducts business outside of their own reservation. The State of New Dakota is not preempted by federal or tribal interests from imposing the 4 N.D.C. § 212 tax against the Wendat Band because Indian tribes do not enjoy tax immunity outside their reservation, so the state tax in question does not interfere with federal law.

ii. Even Withstanding the State's Ability to Tax, the State Remits the Tax Back to the Tribe and Therefore Only Acts as an Intermediary

The State of New Dakota may rightfully tax the Wendat Band's corporation because they operate outside of their own reservation. However, even if the State of New Dakota could not tax the WCDC's business, in this case Maumee has the right to impose the same tax, so the State of New Dakota merely acts as an intermediary to collect and remit the tax to the tribe in order to centralize and efficiently impose 4 N.D.C. § 212.

Tribal self-governance and sovereign status require the ability to generate revenue for the tribe, so accordingly, tribes have the power to collect taxes on their reservation. See *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 130-31 (1982) (this Court held the power to tax is essential for Indian sovereignty because it allows tribes to receive revenues for essential services, and the authority derives from a tribe's general authority to control economic activities within its reservation). A tribe may regulate, through taxation, the activities of nonmembers who enter consensual relationships with the tribe or its members through commercial dealing, contracts, leases, or other arrangements. *Montana v. United States*, 450 U.S. 544, 565-66 (1981). As provided in 4 N.D.C. §§ 212(4) and (5), no Indian

tribe or tribal business operating on its own reservation held in trust by the Untied States is subject to this tax, and further, the State of New Dakota will remit the proceeds of any taxes collected from any entities operating on the tribe's reservation. In 4 N.D.C. § 212(5), the State of New Dakota's Department of Revenue recognized that each tribe could collect this tax itself, but it is most efficient for the state to centralize the collection and enforcement of the tax, and then provide the funds to the tribe.

The Maumee Tribe has the inherent power to collect a tax on any nonmember businesses operating on their reservation. However, in this case, the State of New Dakota collects the tax for the tribe and provides the tribe with the funds. As this Court previously stated, where tribal sovereignty is at stake, we tread lightly in the absence of clear indications of legislative intent. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 60 (1978). However, in this case, the legislative intent is clear from the language of 4 N.D.C. § 212(5). Based on the plain language of the Transaction Privilege Tax statute, the State of New Dakota's sole intent in collecting a tax from businesses operating on any of its Indian reservations is to centralize the collection of the tax and make the process as efficient as possible. Because the state remits the tax back to the tribe, the state is not collecting the tax for the benefit of the State of New Dakota, rather, the state is acting as an intermediary to uniformly impose the tax. The WCDC proposes to operate a business on Maumee land, Maumee has the inherent power to tax nonmember businesses, and the state merely enforces this power.

Even if federal or tribal interests preempted the state from collecting the tax, the State of New Dakota may still impose the tax on the WCDC's proposed complex because the state is not collecting the tax for its own use, rather, the state is enforcing Maumee's right to tax nonmember businesses operating on their land.

B. The State of New Dakota's Transaction Privilege Tax Does Not Infringe on Indian Sovereignty

The second issue is whether the application of 4 N.D.C. § 212 infringes on tribal sovereignty. The State of New Dakota's collection of 4 N.D.C. § 212 does not infringe on the Indian sovereignty of either the Maumee or Wendat Band tribes.

Indian tribes have the right to self-governance, and tribes exercise inherent sovereign authority over their members and their territories. *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 509 (1991). State action may not infringe on an Indian tribe's sovereignty or their right to make their own laws and be ruled by them. *Williams v. Lee*, 358 U.S. 217, 220 (1959); *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 171-72 (1973). Many courts have held that interference with tribal sovereignty poses a barrier to state taxation on tribal land. *Tulalip Tribes v. Washington*, 349 F.Supp.3d 1046, 1062 (10th Cir., 2018). The test to determine if state action infringes on tribal sovereignty requires analyzing if the state action violated the rights of reservation Indians. *McClanahan*, 411 U.S. at 181. Infringement is not a categorical bar on state action, but rather, it is the backdrop in which federal preemption is applied. *Id*. at 172-73. Even though infringement on tribal sovereignty is a backdrop to preemption, it can still be a sufficient basis to hold a state law inapplicable. *Bracker*, 448 U.S. at 143. However, while sufficient, invalidation of a state law because it interferes with tribal sovereignty is disfavored. *Rice v. Rehner*, 463 U.S. 713, 720 (1983).

In this case, the Wendat Band contends that 4 N.D.C. § 212 infringes on tribal sovereignty. In *Williams v. Lee,* this Court found that exercising state jurisdiction in an action to collect goods sold on credit would infringe on the right of the Indians to govern themselves. *Williams*, 358 U.S. at 223. This Court reasoned that Congress consistently

assumed that the States have no power to regulate the affairs of Indians on a reservation. *Id*. at 220. This Court held that the test for determining the validity of state action is whether it infringes on the right of reservation Indians to make their own laws and be ruled by them. *Id*. However, while the Wendat Band operates their business in Indian country, they operate outside of their own reservation, therefore Wendat Band lacks authority to make their own rules on Maumee's land. Additionally, this Court held that the test set out in *Williams* is designed to apply to situations involving non-Indians, and this case involves an Indian tribe conducting business on another tribe's reservation. *McClanahan*, 411 U.S. at 179.

Additionally, 4 N.D.C. § 212 does not infringe on tribal sovereignty based on Maumee's inability to impose the tax itself. 4 N.D.C. § 212 does not violate the rights of reservation Indians by collecting and remitting the tax to the tribe because the state merely collects and remits the tax, which Maumee has the right to impose. The State of New Dakota fully recognizes the right of the Maumee tribe to sovereignly impose the Transaction Privilege Tax in 4 N.D.C. § 212(5), but the state voluntarily performs the collection of the tax for the sake of efficiency. The tax does not prohibit Maumee from exercising their right to sovereignly collect the tax. Further, if the Maumee tribe were to expressly collect this same tax itself, then in that situation, 4 N.D.C. § 212 would be preempted by the tribal tax.

The State of New Dakota's enforcement of 4 N.D.C. § 212 does not infringe on tribal sovereignty. The tax does not infringe on the tribal sovereignty of the Wendat Band because the tribe is operating on Maumee land, and they do not have the right to make or enforce their own laws outside of their own reservation. Additionally, the state action does not violate the rights of Maumee reservation Indians because the state merely enforces the tax that the

Maumee tribe has the right to impose, and it does not preclude Maumee's right to impose the tax itself.

C. As A Matter of Policy, The Maumee Tribe Should Receive the Funds Generated by The Transaction Privilege Tax

Lastly, as a matter of policy, Maumee should receive the funds generated by 4 N.D.C. § 212 because the additional tax revenue is crucial to the economic health of the tribe.

Indian tribes are one of the United States' most economically disadvantaged populations. See Algernon Austin, *Native Americans and Jobs: The Challenge and the Promise*, ECONOMIC POLICY INSTITUTE, Dec. 17, 2013, https://www.epi.org/publication/bp370-native-americans-jobs/. In recent years, Indian tribes increased their income and wealth through new and innovative economic developments, however, Indian tribes remain economically depressed, and their unemployment rate remains high. *Id*.

Lately, Maumee's largest source of revenue, sustainable timber harvesting, declined 12% per year due to climate change. The revenue generated from taxing the Wendat Band's shopping complex would be used for tribal scholarships, investing in renewable energy and sustainable economic develop to diversify Maumee's economy, providing basic services, and creating jobs for Maumee tribal members. In contrast, the Wendat Band's members average income is 25% higher than that of a Maumee member. Ideally, the tax revenue will improve the economic status of many Maumee tribal members, and it will allow the members to become regular consumers of the WCDC's shopping complex.

As a matter of policy, the Maumee tribe should receive the funds generated by the tax. The Maumee needs these funds to invest back into their economy, as one of their largest sources of revenue is steadily declining.

In sum, the neither the doctrine of preemption nor infringement prohibit the State of New Dakota from collecting a Transaction Privilege Tax pursuant to 4 N.D.C. § 212. Neither federal nor tribal interests preempt the tax because states have the right to tax Indian tribes when they operate outside their reservation, and even if the state did not have the right to tax, the State of New Dakota is merely acting as an intermediary to collect and remit the tax back to the tribe. Additionally, the tax does not infringe on either tribe's sovereignty because the tax does not violate the right of either tribe to make or follow their own laws. Further, as a matter of policy, the funds generated by the tax should be remitted to the Maumee tribe to foster their economic health.

CONCLUSION

For the reasons stated above, Petitioners Maumee Indian Nation asks this Court to reverse the decision of the Thirteenth Circuit and remand for further proceedings.

Petitioners respectfully ask this Court to find that since the Maumee Reservation was not diminished by either the Treaty with the Wendat or the Maumee Allotment Act because Congress had not clearly expressed diminishment or manifested intent towards diminishment, the Topanga Cession remains within the Maumee Reservation.

Furthermore, neither the doctrine of preemption nor infringement prohibit the state from collecting the Transaction Privilege Tax. The tax does not contradict or interfere with federal or tribal interests. First, states can impose taxes on Indians acting outside of their reservation, and even if the state lacked this authority, the state is only acting as an intermediary to collect and remit the tax to the tribe. Additionally, the state action does not infringe on tribal sovereignty because the tax does not violate either tribe's right to self-

governance. For these reasons, Petitioners Maumee Indian Nation asks this Court to reverse the decision of the Court of Appeals for the Thirteenth Circuit.

Respectfully submitted,

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