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 ON THE MERITS FOR THE RESPONDENT

Team: **T1028**

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QUESTIONS PRESENTED

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?

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?

STATEMENT OF THE CASE

I. STATEMENT OF PROCEEDINGS

The Maumee Indian Nation brought suit against the Wendat Band of Huron Indians raising two issues concerning the abrogation of the Treaty of Wauseon and whether the doctrine of Indian preemption or infringement prevents the State of New Dakota from collecting its Transaction Privilege Tax. The District Court held in favor of the Maumee declaring that the Topanga Cession was clearly part of the lands belonging to the Maumee in the Treaty of Wauseon. R. at 9. Therefore, the court failed to find any factors in *Solem v. Bartlett*, 465 U.S. 463 (1984) and the Maumee Allotment Act of 1908, P.L. 60-8107 (May 29, 1908) that indicated any intent to diminish the Maumee Reservation. R. at 9. But rather, the Wendat Allotment Act, P.L. 52-8222 (Jan. 14, 1892) diminished any claim that the Wendat Tribe have on the Topanga Cession. R. at 9. In regard to the issue of the collection of the TPT, the Court found that the State of New Dakota may levy its tax on the Topanga Cession and there was no Indian preemption or infringement. R. at 9.

The United States Court of Appeals for the Thirteenth Circuit reversed the decision of the District Court on both issues. The Court held that regardless of the ambiguity in the specific language of the Maumee Allotment Act of 1908, the Treaty with the Wendat of 1859 clearly indicated that the Maumee claim to the Topanga Cession has been abrogated. R. at 10. In addition, the Court held that there is no cession language sufficient enough to diminish the Wendat Reservation, therefore, the Topanga Cession is location on Indian country belonging to the Wendat Reservation. R. at 10. In regard to the second issue, the Court held that both the Indian doctrine of preemption and infringement prevented the State of New Dakota from collecting a Transaction Privilege Tax under §212. R. at 11. The Court held that the tax infringes on tribal sovereignty as described in *Williams v. Lee*, 358 U.S. 217 (1959) and should be subject to Indian preemption under *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). R. at 11. The Court notes that the doctrine of Indian infringement and preemption are independent and only one will suffice, both are present in the case before the court.

The Maumee Indian Nation petitioned the United States Supreme Court for a Writ of Certiorari to hear appeal from the Thirteenth Circuit. The Supreme Court granted certiorari to the Maumee to resolve this matter.

II. STATEMENT OF FACTS

The Maumee Indian Nation ("Maumee" or "the Nation") and the Wendat Band of Huron Indians ("Wendat" or "the Band") are federally recognized Indian tribes whose respective reservations are located within the State of New Dakota. The Maumee's present reservation was established by the Treaty of Wauseon ("Maumee treaty"), which the U.S. Senate ratified in 1802. The Wendat's present reservation was established by the Treaty with the Wendat ("Wendat treaty"), which the U.S. Senate ratified in 1859. The Wapakoneta River ("Wapakoneta" or

“river”) is mentioned in both treaties. Limited by specified northern and southern boundaries not in dispute here, the Maumee treaty guaranteed the Maumee would reserve lands located west of the Wapakoneta, while the Wendat treaty guaranteed the Wendat would reserve lands east of that river. At some point in the 1830s, the river moved three miles west of its location at the time the Senate ratified the Maumee’s treaty in 1802. The tribes jointly refer to the land located within the river’s pre-1830s location and its present (i.e., post-1830s) location as the Topanga Cession. Both tribes stipulated below that the issues presented in this case may be resolved by this Court without reference to water law.

As part of the United States’ efforts to erode Indian sovereignty and interests over tribal lands, Congress crafted the General Allotment Act of 1887 (“Dawes Act”). *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452, 2463 (2020). As the Indian wars drew to a close, the United States wanted to directly inject White-American cultural values into Indian Country. *Id.* This included challenging the view many tribal communities held regarding land ownership: communal rather than individual. *Id.* The Dawes Act approached sought to accomplish this prerogative by opening up Indian lands to non-Indian settlement – especially non-Indians seeking cheap and plentiful farming lands. *Solem v. Bartlett*, 465 U.S. 463, 467 (1984). Both of the tribes involved in the present dispute were subjected to individual allotment (or “surplus land”) acts: the Wendat in 1892 and the Maumee in 1908. The parties agree that the Topanga Cession was subjected to allotment under one of the two surplus land acts. The Maumee received about $2,000,000 for approximately 400,000 acres while the Wendat received about $2,200,000 for 650,000 acres of surplus lands. As with other allotment acts, each tribe held certain amounts of land in common, while individual members were able to select individual allotments prior to unallotted surplus lands becoming purchasable by non-Indians.

Both tribes stipulated below to the census numbers regarding the percentage of Indian residents in each of the following geographic locations: the entirety of the Maumee Reservation, the Topanga Cession, and the western half of the Wendat Reservation. That data is presented in a table in the district court's opinion. The tribes agree that very few, if any, of their members selected land allotments within the Topanga Cession. They also agree that most present-day land-owning Indian residents within the Topanga Cession purchased their land through methods unrelated to either tribe's allotment act. Both tribes have historically maintained a claim to the lands within the Topanga Cession. Specifically, both tribes claim that, although their respective allotment acts opened up lands within the Topanga Cession to non-Indian settlement, the boundaries of their reservation were not diminished.

In 2013, the Band purchased in fee a 1400-acre land parcel located within the Topanga Cession. The previous owners were non-Indian and the land is not held in trust. The Band in 2015 announced its plan to construct a dual residential – commercial complex ("complex") on this land parcel. The complex will include the following: public housing for low-income Wendat tribal members as well as for tribal elders in need of nursing care; a Wendat cultural center and museum; and a shopping center featuring a Wendat-cuisine café, a grocery store tailored to the needs of Wendat members, a pharmacy, a bookstore, and a salon/spa. The completed complex will result in the creation of hundreds of jobs and produce about $80 million in non-gaming revenue for the Band annually.

A few months after the Band's announcement of its plans for the complex, the Maumee communicated to the Band its belief that the land on which the complex was to be built was within the Maumee Reservation. The Maumee expressed their belief that the Wendat Act eliminated any interests the Maumee may have had over the parcel in question. The Band replied

that the land parcel – in addition to the rest of the Topanga Cession – remains part of the Wendat Reservation as established in the Wendat Treaty. The Band challenged the Maumee's claim that the Wendat Act diminished the Wendat Reservation.

New Dakota requires that persons who operate businesses that gross more than $5,000 in gross sales or gross income annually must apply and pay for a Transaction Privilege Tax (TPT) license. The text of 4 N.D.C §212 is reproduced in its entirety in the district court opinion. Various subparts of §212 pertain directly to New Dakota's twelve federally recognized Indian tribes. In short, the following provisions are implicated by the present litigation: §212(4) provides that an Indian tribe operating within its reservation is not subject to the TPT; §212(5) provides that non-Indian business entities operating within Indian Country must still pay the required 3% sales tax noted in §212(2), but notes that that tax will be collected by the state but remitted to the tribe on whose lands the business operates; §212(6) notes that the state will provide half of the 3% sales tax (that is, 1.5%) to the Maumee Nation collected from businesses operating within Door Prairie County that are not located within the Maumee's Reservation boundaries.

The present litigation ensued after the Band challenged the Maumee Nation's claim that the Band need acquire a TPT and remit sales tax to the state.

SUMMARY OF ARGUMENT

I. The Topanga Cession remains part of the Wendat Band's reservation and any claim the Maumee Nation may have had to that land was eliminated following the enactment of the Maumee Allotment Act of 1908.

The plain and clear language of the Wendat Treaty indicates a congressional intent to abrogate the United States' prior agreement with the Maumee Nation. The Wendat Treaty was

ratified in 1859, which was at least 20 years after the movement of the Wapakoneta River. The treaty's language pertaining to the Wendat reserving lands east of the river is without qualification, without condition, and without suggestion that the lands in question were based off of where the Wapakoneta *used to be*. The Senate discussion of the treaty lends further support for the Band's position that the United States was aware of the river's post-1830s geographic location. The discussion strongly suggests that the Senate believed that the Wendat were, in fact, reserving lands in the immediate proximity of the Wapakoneta. One Senator posited that the lands adjacent to the Wapakoneta ought to be acquired through cession in the present treaty, as he expected they would be eventually. Because the Senate endorsed language in the treaty that clearly establishes that the Wendat maintained sovereignty over lands east of the Wapakoneta River based on the post-1830s location of that river, this Court should hold it to its word.

Alternatively, if the Court finds the Wendat Treaty did not have such an effect, Congress eliminated Maumee interests through the allotment process. The Maumee allotment act set forth an operative framework that resulted in the diminishment of any interest the Maumee may have had in the Topanga Cession. However, Congress accomplished this task through atypical means. Rather than authorize the United States to purchase all surplus lands at once and eliminating the Maumee interest in the Topanga Cession that way, Congress took a longer-term approach to diminishing the Maumee Reservation. Congress clarified in section one of the Maumee Act that lands disposed of through the act's provisions would be ceded back to the public domain. This resulted in a piece-by-piece diminishment of the Maumee Reservation. The lack of an unconditional promise to pay a definite amount does not alter this outcome.

Finally, while the Maumee allotment act clearly caused the Maumee Reservation's diminishment, the Wendat Act had no such effect. This is true despite Congress's contempt for

the "blanket" Wendat Indians. Operating in a pre-*Lone Wolf v. Hitchcock* reality, Congress acted under the belief that it could not unilaterally alter the treaty-guaranteed boundaries of the Wendat Reservation. If the Wendat Act had passed after the *Lone Wolf* decision, Congress would readily abrogate its treaty promises to the Wendat. But, as this court noted just last term in *McGirt*, "wishes are not laws" and "future plans aren't either." *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452, 2465 (2020). Congress made a promise to the Wendat and this Court should hold Congress to its word.

The Maumee Nation will likely point to section of the Wendat Act to challenge the continued existence of the original boundaries of the Wendat Reservation. As explained above, however, section two provided payment to the Wendat only for lands *declared* surplus. No language of disposal appears in that section and no language indicative of cession appears at all in the Wendat Act. The Topanga Cession remains Indian Country under the exclusive tribal jurisdiction of the Wendat Band of Huron Indians.

To reverse the circuit court's finding – that the Wendat Act did not result in diminishment – would be a stark departure from decades of this Court's diminishment line of cases. It would lead to more frequent findings of diminishment of other reservations based on interpretations that are inapposite to the diminishment analysis provided in *Solem v. Bartlett*. This Court should not start down that path based on the language of the Wendat Act.

II. Assuming the Topanga Cession is still in Indian country, the doctrine of Indian preemption and/or infringement prevent the State of New Dakota from collecting its Transaction Privilege Tax (TPT) against a Wendat tribal corporation.

In addition, this Court should affirm the Thirteenth Circuit's order to prevent the State of New Dakota from collecting its Transaction Privilege Tax (TPT) against a Wendat tribal

corporation under 4 N.D.C. §212. This is due to the doctrine of Indian preemption and/or infringement. The doctrine of Indian preemption and infringement are two independent barriers that can prevent the state from interfering with tribal members and collecting a tax on the land. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). Either preemption or infringement can stand alone to prevent the State of New Dakota from collecting its TPT against a Wendat tribal corporation, but both doctrines are present in this case and either or can bar the State of New Dakota from collecting TPT.

The state of New Dakota has no authority to collect the TPT presuming that the land is in Indian country because a state may not impose a tax that is preempted by tribal interests outweighing federal/state interest in accordance with *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). Here, the Band interests when contracting this commercial development was to foster cultural preservation and expansion through greater availability of traditional Wendat cuisine, culture, and history. In addition, the Band's interest expands fiscally by collecting the income the Tribe received from the development and in return contributed it to the economic well-being and self-sufficiency of the Tribe. Compared to the state's interest which are strictly on producing revenue growth for the state of New Dakota. Therefore, the doctrine of Indian preemption prohibits the state from levying its TPT against the Wendat Band because the tribes interest outweighs the interest of the state.

However, if the Court is reluctant to agree the tribes interest outweigh the states and the TPT is not preempted, the Court should prevent the state of New Dakota from collecting its TPT against a Wendat tribal corporation because the collection of the tax infringes on the tribe's sovereign powers in accordance *Williams v. Lee*, 358 U.S. 217 (1959). There is a strong presumption that any Indian tribe contains sovereignty over their territory and their members.

Therefore, States may not collect taxes or take certain actions that would infringe upon the reservations ability to govern itself.

Because of this, the doctrine of Indian preemption and/or infringement would prevent the State of New Dakota from collecting its Transaction Privilege Tax under 4 N.D.C. §212.

ARGUMENT

I. The Topanga Cession remains part of the Wendat Band's reservation and any claim the Maumee Nation may have had to that land was eliminated following the enactment of the Maumee Allotment Act of 1908

1. Wendat Treaty's Effects on Maumee Reservation

i. Treaty Text

The Wendat Treaty clearly and through plain terms abrogated the terms of the Maumee Treaty. This Court's precedent regarding Indian treaties presumes no abrogation by the United States unless clearly and explicitly manifested. *United States v. Celestine*, 215 U.S. 278, 285 (1909). Further, at least as interpretation applies to cases involving conflicting state and tribal interests, this Court has required that the equal footing doctrine does not invariably supersede the general presumption in favor of continued Indian land interests. *Herrera v. Wyoming*, 139 S. Ct. 1686, 1690–91 (2019), and *Minnesota v. Milles Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999). Instead, the equal footing doctrine provides that a finding in favor of the state can only follow a careful and explicit weighing of the pre-existing treaty-guaranteed tribal interests and a conscious decision to abrogate them. *United States v. Dion*, 476 U.S. 734, 738 (1986). Certainly, the case of interpreting two separate Indian treaties with two separate tribes does not invite equal footing doctrine concerns or analyses. While the conflict between two tribes is certainly analogous to a state-tribal conflict, the imbalance between the sovereign powers of a state and

the domestic-dependent-sovereign-powers of an Indian tribe are conspicuously absent. As a result, this Court need not apply the same analysis to a dispute involving two tribes.

The plain language of the Wendat Treaty reflects the United States' understanding – even if mistaken – that the Band was the rightful owner of the lands at issue here. Article one of the Wendat Treaty is the sole article of relevance to resolving the issue of abrogation of the Maumee Treaty's terms. The Band "agree[d] to cede" all of their lands with the exception of "those lands East of the Wapakoneta River." Treaty with the Wendat, Art. I, March 26, 1859, 35 Stat. 7749. No language of qualification of the land cession nor any suggesting disputed land ownership between the tribes is present. The Maumee likely view this language as solely referring to the lands east of where the Wapakoneta River *had previously flowed*. That is, where the river flowed at the time of the Maumee's own treaty with the United States decades prior. But such a reading relies on numerous flawed presumptions. First, that approach requires the United States to have been entirely ignorant of the river's movement.

While both tribes agree the river moved at some time in the 1830s, the Maumee's interpretation of the Wendat Treaty would presume that the United States, even after at least 20 years, remained ignorant of the river's movement. But if 20-plus years is insufficient for the Senate and the Indian agents to become aware of the river's movement, then how much time needed to have elapsed? This Court should not interpret the United States as having been ignorant of the river's movement when they negotiated and ratified the Wendat Treaty.

ii. Senate Deliberation of the Wendat Treaty

The Senate discussion of the Wendat Treaty lends further support to the conclusion that the United States was aware of the Wapakoneta's post-movement location. Senator Powell (KY) opined that the United States would ultimately seek further Wendat cessions and ideally should

have sought them in the present treaty. Cong. Globe, 35th Cong., 2nd Sess. 5411 (1859). Senator Powell noted the paucity of Indians then living near the Wapakoneta River as well as near the Zion tributary (the northern boundary of the reserved Wendat land). *Id.* His comments corroborate the plain language of the treaty: the Wendat both owned the Topanga cession at the time of the treaty's formation and reserved it following the treaty's ratification. While the Senators discussed the status of Maumee lands, they did so only to express hope the Wendat would follow the Maumee's example in becoming more "peaceable." *Id.* The Band admits that the Senate discussion of the Wendat Treaty is by no means, in and of itself, dispositive of the issue at hand, but submits that it provides considerable support for the position that any interests the Maumee had in the Topanga Cession did not survive the Wendat Treaty.

2. The Maumee Allotment Act Led to Diminishment

i. Diminishment Approaches

Even if the Maumee's interests in the Topanga Cession survived the Wendat Treaty's provisions, the Maumee Allotment Act plainly and clearly diminished the Maumee Reservation so as not to include the disputed land. This Court has provided a straightforward test to determine whether a surplus land act resulted in the diminishment of an existing reservation's boundaries. *Solem v. Bartlett*, 465 U.S. 463, 469–72 (1984). A court must focus primarily on the plain language of a surplus land act to determine whether Congress intended diminishment. An intent to merely sell and dispose of the surplus lands does not necessarily indicate an intent to diminish, but rather open up Indian lands to non-Indian settlement. As this court noted last term in *McGirt v. Oklahoma*, a court should not rely on legislative history or contemporaneous understanding of the effects of a surplus lands act "*instead of*" the actual statutory language. *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452, 2468 (2020) (emphasis in

original). Those factors may provide additional context, of course, but cannot suffice as an independent path for a court to find disestablishment when the statute does not otherwise support such a finding.

This Court has explained that the presence of both clear language of cession – or language clearly manifesting an intent to diminish a reservation – coupled with an unconditional promise to pay creates an almost insurmountable presumption that the act resulted in diminishment. *DeCoteau v. District County Court for Tenth Judicial Dist.*, 420 U.S. 425, 444–45 (1975). The absence of one or both of these factors does not, however, automatically lead to the contrary conclusion. *Hagen v. Utah*, 510 U.S. 399, 411 (1994), and *Rosebud Sioux Tribe v. Kneip*, 420 U.S. 584, 597 (1977). This court's line of diminishment cases can be divided into two fairly distinct categories. *Id.* at 411–12. The first category, which the Band refers to as the real-estate-broker approach, does not result in diminishment. This approach does not involve the United States paying a definite sum to the tribe in exchange for cession of the lands to the United States. *Solem*, 465 U.S. at 473 (Interior "Secretary . . . was simply being authorized to act as tribe's *sales agent*") (emphasis added). Instead, the United States acts as a real-estate-broker for the tribe. The United States sells the land piece-by-piece to interested homesteaders and places their payment in an account for the tribe. One potential benefit Congress received through this approach was that non-Indians who moved onto surplus lands within a reservation would provide tribal members with a civilizing influence as defined by contemporaneous White-American standards. *Seymour v. Superintendent of Wash. State Penitentiary*, 368 U.S. 351, 356 (1962).

The Court has specifically contemplated the effects an act utilizing the real-estate-broker approach would have on the surplus lands. The act would simply open up the Indian lands to

non-Indian settlement, but they would remain Indian Country. *Solem*, 465 U.S. at 470 (distinguishing acts that diminished reservations from acts "that offered non-Indians the opportunity to purchase lands within established Reservation boundaries"), *Seymour*, 368 U.S. at 358.

The second approach to surplus land, which the Band refers to as the lump-sum approach, results in diminishment of the surplus lands. The United States designates certain reservation lands as surplus, purchases those lands, and then later sells individual parcels to interested homesteaders. Through the act of selling the surplus lands to the United States in a lump-sum purchase, the tribe has ceded their interests and the surplus lands lose their Indian Country status. *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 337–39 (1998) (reservation was diminished despite savings clause stating that existing treaty's provisions would be unchanged). This approach is in line with the above-mentioned scenario in which both language of cession and an unconditional payment to pay a definite amount almost certainly results in diminishment of a given reservation's boundaries. *Hagen*, 510 U.S. at 411. Surplus acts that indicate the surplus lands will be returned to the "public domain" tend to support a finding of diminishment. *Id.* This Court has historically distinguished lands within Indian Country from those of the public domain. *United States v. Alford*, 274 U.S. 264, 266–67 (1927).

ii. Statutory Text of the Maumee Allotment Act

The Maumee Allotment Act's plain language indicates that Congress intended for diminishment to occur and included provisions to achieve that end. The Band admits that, if the act's language only suggested an eventual intent to diminish the reservation through subsequent legislation, this Court should not find diminishment. But the act includes the language necessary to actuate diminishment. The act has elements of both the real-estate-broker and lump-sum

approaches. In line with the broker approach, the act provides that the money from lands "actually" sold will be placed in a U.S. Treasury account on behalf of the Maumee. Maumee Allotment Act of 1908, P.L. 60–8107 § 4 (May 29, 1908) ("Maumee Act"). In line with the lump-sum approach, section one notes that the Maumee would "cede their interest in the surplus lands to the United States where it may be returned [to] the public domain by way of this act." *Id.* at § 1. The *Yankton* court held that the phrase '"cede, sell, relinquish, and convey to the United States,"' along with an unconditional promise to pay the tribe a definite amount, resulted in diminishment. *Yankton*, 522 U.S. at 338. This Court likely would not have found the Yankton Sioux's reservation to have been undiminished if the only operative language of cession had been "cede." Correspondingly, this Court should find "cede" as used in the Maumee Act to have the same effect.

The Maumee likely view their allotment act, however, as not resulting in diminishment because of the absence of an unconditional promise to pay the Nation for their surplus lands. If the court were to read the conditional language of payment in isolation, then it certainly could arrive at the same conclusion. Section four does not tie the United States to the conditional language of payment for the surplus lands. Instead, that section, in line with the real-estate-broker model, explains that the Nation would only be paid after the lands had been sold. The only section in which the United States promises payment relates to two sections of the surplus lands to be set aside for communal use.

The sections of the Maumee Act that pertain to payment for lands sold do not actuate a diminishment. Section one of the act, however, clarifies that, while the payment provisions tend not to support a finding of diminishment, the clear and unambiguous language of cession directly achieves that result. Specifically, the final sentence of section one sets forth a process through

which all lands "by way of this act" will be ceded to the United States. Maumee Act § 1. The Band views that phrase as establishing that – despite the surplus lands being sold in accordance with the real-estate-broker model – once a homesteader purchased a land parcel, that specific parcel was effectively ceded by the Nation and lost its Indian Country status. This interpretation helps make sense of the seemingly conflicting allotment approaches present in this act. Certainly, the manner in which this particular act achieves diminishment significantly departs from the standard lump-sum approach. But as this court has repeatedly noted: no particular language is necessary to achieve diminishment of a reservation.

iii. Legislative History

The legislative history of the Maumee Act lends further support for finding diminishment. Congress passed the Maumee Act after this Court recognized its right to unilaterally alter – or outright abolish – the boundaries of existing Indian reservations. *Lone Wolf v. Hitchcock*, 187 U.S. 553, 566 (1903). Operating in a post-*Lone Wolf* reality, Congress did not need to worry about gaining Maumee consent in return for the disposal of their surplus lands. Even without unilateral authority to diminish, Congress, by its own accounts of its dealings with the Maumee would have easily gained their consent to any allotment act. The House debate on the Maumee Act reflect a perception of the Maumee as being ready for citizenship and being a "very intelligent class of Indians." 42 Cong. Rec. 2345, 2347 (May 29, 1908).

The House debate reflects the contemporaneous goal of surplus land acts as seeking to gradually eliminate Native culture to be replaced with idyllic yeoman-style farming lifestyles. The only matter that still hindered the Maumee's progress toward American notions of truly civilized living was the continued existence of their reservation. Representative Ferris explained to his colleagues that aiding Indians necessarily involved having their lands allotted and having

non-Indian role models move onto nearby allotments. 42 Cong. Rec. 2348. While the House debate is not sufficient, in and of itself, to establish diminishment, the Band submits that it demonstrates that the goal of diminishment of Maumee lands was central to the crafting of this legislation. Combined with the fact that the statute's language sets forth a framework for all surplus lands sold to be ceded and the Nation's interests in them terminated in the process, the legislative history unambiguously supports a finding of diminishment.

iv. Contemporaneous Understanding and Piece-by-Piece Diminishment

This Court in *McGirt* did not want to permit courts to find disestablishment merely on the basis of evidence of a contemporaneous understanding that Congress's intent was to diminish a reservation. Specifically, the court warned against using such evidence *instead of* the statute's express language. But no such concerns are present here. The Maumee Act supports diminishment and the legislative history does not merely intimate a future intent to diminish the Maumee Reservation in future legislative action. Rather, the legislative history bespeaks a *present* intent in the *present* legislation to set forth an operative framework by which surplus lands are taken out of Indian Country.

At the time of its enactment, the Maumee Act did not quickly result in disestablishment of the Maumee Reservation. Unlike acts under the archetypal lump-sum approach, Congress did not appropriate funds for the purchase of the surplus lands nor make a promise to purchase them. So, without subsequent purchase of the surplus land parcels by individual non-Indian homesteaders, no disestablishment would have occurred. The framework to actuate disestablishment was present but until the lands were "actually sold" the language of cession had no actual effect. Maumee Act § 4. For these reasons, the Court should view the lands "actually sold" to determine whether Maumee interest in the Topanga Cession ultimately resulted in

disestablishment. *Id.* While the records of sale for the land parcels are spoilt, both tribes stipulated that the Maumee Actually sold about 400,000 acres through their allotment act. For the reasons outlined above, as each acre was sold, it lost its Indian Country status. Correspondingly, all 400,000 acres were not ceded all at once, but rather piece-by-piece.

Turning to the specific geographical description of which Maumee lands were part of their allotment act, the Band will accept, for the sake of this particular argument, that the Wendat Treaty did not abrogate the Maumee Treaty. Section one provides that the Maumee would consider all lands within the eastern quarter of their reservation as surplus lands. The Maumee admit that they actually sold 400,000 acres in exchange for $2,000,000. Both parties agree that one of the two allotment acts at issue here declared most of the land within the Topanga Cession to be surplus. *Maumee Indian Nation v. Wendat Band of Huron Indians*, 305 F. Supp. 3d 44, 45 (D. New Dak. 2018). Given these uncontested facts regarding the Topanga Cession and the clear tools Congress provided to the United States to effect a gradual, albeit atypical, piece-by-piece diminishment of Maumee interests over those lands, this Court should not override Congress's clear and unambiguous intent to diminish the Maumee Reservation. This is not a diminishment act in which Congress merely hinted at their future intent to diminish or disestablish the Maumee Reservation through subsequent legislation. Instead, the Maumee allotment act provided the immediate tools to achieve that congressional goal, with or without further legislative action.

3. The Wendat Reservation Survived Allotment

i. Statutory Text

The Wendat Allotment Act did not result in a diminishment of the Wendat Reservation; Wendat interests over the Topanga Cession survived the allotment process. As with the Maumee Act, the Wendat Act includes a blend between the lump-sum and real-estate-broker approaches

to surplus land disposal. However, where the Maumee Act laid out a framework that ultimately resulted in diminishment, the Wendat Act did not. The Wendat Act's second section features language indicative of the lump-sum approach in two key respects: (1) an unconditional promise to pay a fixed price per acre declared surplus; and (2) language indicating that the payment of up to $2,200,000 for every acre declared to be surplus land will constitute "total and complete compensation." Wendat Allotment Act, P.L. 52–8222 § 1 (Jan. 14, 1892) ("Wendat Act").

Where the Wendat Act crucially differs from the lump-sum approach is that the second section does not provide payment to the Band on the basis of the surplus lands' disposal or cession – two words which do not appear in this section in any form. Instead, the payment is targeted solely to provide remuneration to the Band for "every acre declared surplus" ("declared-surplus payment"). Wendat Act § 1. Only in section three does the act discuss the later disposal of surplus lands to non-Indian homesteaders. Wendat Act § 3. The act thus provides for payment in two respects: (1) following completion of the allotment process and after allotments that Band members did not select are declared surplus lands; and (2) the "money accruing from the disposal of said lands." Wendat Act § 3. Sections two and three's respective mentioning of the U.S. Treasury's role lends further support to viewing the declared-surplus payment as a payment entirely unrelated to remuneration the Band would receive for lands actually sold. Section two states that the "United States hereby agrees to pay into the Treasury," while section three states that the payment for the lands subsequently sold "shall be placed into the Treasury . . . for the credit of" the Band. Wendat Act §§ 2–3. Section two provides for payment once the act becomes law and section three provides for additional payment as the lands are sold. Wendat Act § 2.

The Wendat Act is similar to the real-estate-broker approach by virtue of the language governing disposal of the lands following the allotment process. No language that this Court has

previously found to create a strong presumption in favor of diminishment is present. That is, no variant of the language of cession – '"cede, sell, relinquish, and convey to the United States"' – present in the Yankton Sioux act is found in the Wendat Act. *Yankton*, 522 U.S. at 344. Nor do any of the words – '"discontinued,"' '"abolished,"' or '"vacated"' – indicative of diminishment mentioned in other surplus land acts appear. *Mattz v. Arnett*, 412 U.S. 481, 504 (1973). Further, none of those verbs appear in any form whatsoever in the act. Instead, the act only speaks of "the disposal" of the surplus lands. This Court has noted that no particular set of magic words need be present to cause a cession to occur. It has also repeatedly emphasized that reservations that were merely opened up to non-Indian settlement – absent language stronger than "disposal" or any of its variants – tend not to have been diminished. *Solem*, 465 U.S. at 470. The Wendat Act had the same effect.

ii. **Legislative History**

The inclusion of the declared-surplus payment provision is a departure from other allotment acts this Court has reviewed. In Congress's view, such a departure was for good reason. The House discussion of the Wendat Act – which occurred in a pre-*Lone Wolf* reality – does not require in-depth scrutiny to establish the representatives' deep frustration with the Wendat, who they perceived as obdurately stymieing the United States' beneficent attempts to properly civilize them. In seeking Wendat cooperation, the United States was dealing with "blanket Indians" who were "very little civilized." 23 Cong. Rec. 1777, 1779 (Jan. 14, 1892). But the congressional impetus to open up Wendat lands to non-Indian homesteaders who were "greatly interested in this work being accomplished" was great. 23 Cong. Rec. 1777.

This congressional frustration resulted from the Wendat's interest in '"travel[ing] but one road at a time"' in their allotment negotiations with the United States. *Id.* Section one of the act

alludes to the difficulties the Fort Crosby Indian Agent faced in completing the task of surveying the Wendat Reservation ahead of allotment, particularly the western half. Viewing the language of the statute and the congressional record in tandem establishes that the purpose of the payment provided for in section two is: (1) to induce Wendat cooperation with the allotment process, including the completion of the surveying and subsequent Indian allotment selection; and (2) to accelerate the opening up of the surplus lands to interested non-Indian homesteaders. The section two payment was not one without consideration. Congress was not operating under the belief that it could unilaterally abrogate the Treaty with the Wendat to more quickly meet the demands of their land-hungry constituents. If Congress had passed this act in a post-*Lone Wolf* reality, it would have utilized such unilateral power. Congress held contempt for the Wendat and would have preferred to act without their consent. But this Court should hold Congress to its actual statutory promise: the Wendat Reservation remains undiminished despite non-Indian settlement on surplus lands within its unaltered boundaries.

At the start of the House deliberations on the Wendat Act, the House Clerk read a letter sent by the Secretary of the Interior. The Secretary predicted that the Wendat Act, should it be passed, would add "2,000,000 acres of valuable land . . . to the public domain." 23 Cong. Rec. 1777. Language alluding to the surplus lands re-entering the public domain does not appear in the statute. The Band believes this letter lends additional support for its position against diminishment. It demonstrates that the legal status of the surplus lands, after their sale, was on the minds of the House members as they considered this bill. It may also suggest that the House took it as a given that the sold surplus lands would be returned to the public domain. But this Court should judge Congress's intent first and foremost based on what Congress *ultimately* said and not what it *might have* said.

iii. The Wendat Act Compared to the Maumee Act

While the Maumee Act lays out a clear framework by which Maumee surplus lands would be taken out of Indian Country once sold, no such framework exists in the Wendat Act. Rather, the Wendat Act, in section three, has only a passing reference to the process of disposal: "all money accruing from the disposal of said lands" would be deposited into the U.S. Treasury for the Band. Wendat Act § 3. During their allotment negotiations the Wendat sought to keep the focus on the remuneration they would receive from the United States. Correspondingly, Congress kept its focus less on the legal implications the selling of the surplus lands would have on those lands' Indian Country status and more on quickly opening up the lands to their constituents in time for the growing season. To accomplish that goal, Congress directly provided the Wendat payment in addition to the payment the Band would receive once the lands were sold.

The present Court should find the record of allotment negotiations between the Wendat and the United States remarkably similar to those it considered in *McGirt*. The reasoning this Court applied in interpreting the Creek allotment act in that case runs parallel to the Wendat Act. While the legislative record does not feature an explicit statement from Wendat leaders that they would never cede their lands to the United States, the evidence suggesting such a position is ample. As this court noted in *McGirt*, the pre-*Lone Wolf* Congresses may have simply been unaware of their authority to act unilaterally in disregarding the United States' own treaty obligations. *McGirt*, 140 S. Ct. at 2463. While the Creek came right out and stated they would not cede their lands, the Wendat, through their actions and words, might as well have done so too. Viewed in this context, the Wendat Act, through the inducement-payments provided in section two, represents Congress's interest in taking the most realistic path to opening up Wendat

lands for non-Indian homesteaders. When the totality of the circumstances suggested that gaining Wendat consent for cession was a non-starter, Congress doubled down on the allotment route.

4. **Subsequent Demographic History of the Surplus Land**

The Band believes this Court should maintain its position – most recently reinforced in *McGirt* – that surplus lands' demographic history subsequent to an allotment act should not be used to overcome an otherwise clear finding for or against diminishment. *McGirt*, 140 S. Ct. at 2469. This Court has also repeatedly noted that demographic history is, at best, only potentially useful in resolving a diminishment case. *Nebraska v. Parker*, 136 S. Ct. 1072, 1081 (2016), *Mattz*, 412 U.S. at 505, *DeCoteau*, 420 U.S. at 447 (the Court should not seek to "rewrite" the text of the statute based on the subsequent demographics of the surplus lands). The Court's hesitation to rely heavily on demographics comports with its view that only Congress can modify reservation boundaries. *Yankton*, 522 U.S. at 343. A claim of diminishment using only demographic data as evidence is no claim at all. But here the analysis does not require a comparison of Indian to non-Indian populations. Instead, the analysis requires comparison of Indian populations in a given area relative to Indian populations in another area.

The Band supports the Court considering the interpretive value the subsequent demographic history provides to the issues at hand. Particularly, the Topanga Cession's percentage of Indian residents since the 1920 Census has tended to roughly correspond with the percentage of Indian residents in the western half of the Wendat Reservation. Across the ten censuses conducted since the 1910 census, the average percent-difference between the western half of the Wendat Reservation and the Topanga Cession is 2.21%. *Maumee*, 305 F. Supp. 3d at 47. Meanwhile, the demographic differences in Indian population between the entirety of the

Maumee Indian Reservation and the Topanga Cession has an average percent-difference of 23.79%. *Id.*

These stark averages of difference in population seem to reflect the impact the Maumee Allotment Act of 1908 had on clearing Maumee members from the Topanga Cession. The percentage of Indians in the Topanga Cession went from 80.4% in 1910 (not even two full years after the passage of the Maumee Act) to 20.3% in 1920. *Id.* Thereafter, no demographic shift of a similar degree ever occurred in the Topanga Cession. *Id.* This suggests that the Maumee Act had the effect intended by the Congress that passed it: the clearing of Maumee from lands they gradually ceded to the United States through sale to non-Indian homesteaders. Further, the fact that the percentage of Indian residents did not drop to nearer its 1920 level by the time of the 1910 Census lends further support to the Band's argument that the Maumee Reservation was diminished gradually, as the sale of individual parcels played out over several years. By the time of the 1920 Census, enough time had elapsed for interested homesteaders to purchase a significant amount of Maumee surplus lands and a corresponding departure of Maumee residents seems to have ensued. The subsequent demographic history of the Topanga Cession bears interpretive value in resolving this case. It provides real-world evidence of how Congress intended the Maumee allotment act to impact the Nation's surplus lands.

II. Assuming the Topanga Cession is still in Indian country, the doctrine of Indian preemption and/or infringement prevent the State of New Dakota from collecting its Transaction Privilege Tax (TPT) against a Wendat tribal corporation.

This Court should affirm the Thirteenth Circuit's order to prevent the State of New Dakota from collecting its Transaction Privilege Tax (TPT) against a Wendat tribal corporation because of the doctrines of preemption and/or infringement. A TPT is a tax that is levied on the gross

proceeds of sales or gross income of a business and paid to the state for the 'privilege' of doing business in that state. R. at 5. Under 4 N.D.C. §212(4) there is an automatic exemption from the TPT indicating that:

> 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.

While the Wendat Band has recognized that the land in the Topanga Cession has not been taken into trust and is not subject to the automatic exemption from the TPT under 4 N.D.C. §212(4), the state of New Dakota has no authority to collect the TPT as long as it is in Indian country, which is presumed here. Because of this presumption, the state of New Dakota cannot collect TPT on the land as long as there is a showing that the state's power to collect the tax is either preempted by federal law and/or the TPT infringes upon the Wendat Band's own sovereign powers.

The doctrine of Indian preemption and infringement are two independent barriers that prevent the state from interfering with tribal members. See *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). Either preemption or infringement can stand alone to prevent the State of New Dakota from collecting its TPT against a Wendat tribal corporation. *Id.* at 143. Here, there is a showing that the TPT should be subject to the doctrine of Indian preemption under the decision of *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). There is sufficient evidence to suggest that the tribal interests of the Wendat Band will outweigh the states interest in collection of the TPT therefore preempting the collection of the tax. However, even if the court is reluctant to agree that the tax should be preempted, there is an additional showing that the TPT infringes upon the right of the reservation Indians in accordance with *Williams v. Lee*, 358 U.S. 217 (1959). The state of New Dakota has no authority to collect

the TPT presuming the land is in Indian country because the state's power to collect the tax infringes upon the Band's own sovereign powers. Therefore, the doctrine of Indian preemption and/or infringement prevent the State of New Dakota from collecting its TPT against a Wendat tribal corporation.

1. **A state may not impose a TPT that is preempted by federal or tribal interests in accordance with *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).**

The state of New Dakota has no authority to collect the TPT as the Wendat Band operates under a non-disestablishment Indian country. The state of New Dakota may not impose a tax that is preempted due to the tribal interests in the land outweighing the federal/state interest. The notion of preemption indicates that the federal law will take precedence over a state law assuming there is clear intent for the preemption. See *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 143-44 (1980). However, without clear intent, the Court must conduct a balancing test. *Id.* at 136. In order to determine whether the State TPT is preempted, the court must make "a particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law." *Id.* at 145. The *Bracker* balancing test weighs the interests of a state government compared to the interests of the tribe. To make this determination, the Supreme Court identified factors such as: "the degree of federal regulation involved, the respective governmental interests of the tribes and states (both regulatory and revenue raising), and the provision of tribal or state services to the party the state seeks to tax." See Felix S. Cohen, *Handbook on American Indian Law* 413 (1982) (citing *Central Machinery Co. v. Arizona State Tax Comm'n,* 448 U.S. 160, 163–66 (1980); *White Mountain,* 448 U.S. at 141–45,

Washington v. Confederated Tribes of the Colville Indian Reservation (Colville), 447 U.S. 134, (1980).

The weighing of factors is done on a case-by-case basis as the Supreme Court has repeatedly avoided adopting a rigid rule for governing State authority on Indian lands. See *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 142 (1980). Therefore, "State jurisdiction is pre-empted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." See *New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324, 334 (1983).

i. **Tribal Interest**

In accordance with the balancing test laid out in *Bracker*, the Court shall weigh the tribal interest against the state's interest. The central focus of the tribe can be described in the use of resources the land provides. *Id.* at 337.

The land tract that the Wendat Band was used to construct a commercial development with its central focus to produce revenue and in return financially contribute to the tribe's wellbeing whether that was through health care facilities or nursing homes. This tract of land purchased on the Topanga Cession was a 1,400-acre parcel of land that was intended to be a combination of residential and commercial development. The commercial center was developed as a platform to grow the economic opportunities operating under the tribe's governance. This land would include affordable housing for lower income tribal members as well as a nursing home for elders. In addition, this development would include a tribal cultural center, a tribal museum, and a shopping complex including an authentic café serving traditional Wendat cuisine. The complex will allow the Band to prosper culturally in a variety of ways. The proposed

museum will offer an opportunity to non-members to better understand the long history the Wendat have in New Dakota. As with any minority group that the broader populace has historically misunderstood, providing knowledge of that group helps combat prejudice. Communities adjacent to Indian reservations have had to combat anti-Native racism in a variety of ways. The Wendat hope to combat ignorance of their people through the creation of a cultural center. That is an issue of fundamental and immediate relevance to the tribe. While the Band does not contend the state does not wish to promote tolerance among its peoples, the Band is the entity that more immediately faces its pernicious effects. Therefore, this type of center would allow for cultural preservation and expansion through greater availability of traditional Wendat cuisine, culture, and history.

In addition to the Band having a cultural interest in the land, the tract of land would also allow for economic opportunities for the Tribe. The commercial development would provide over 350 jobs and $80 million in gross revenue, further allowing the Wendat to prosper financially. The income the Tribe received contributed to the economic well-being and self-sufficiency of the Tribe. While the financial gain would allow the tribe to expand and produce revenue for much needed developments such as health care facilities and nursing homes, it is not the only tribal interest at stake. Therefore, this development holds strong ties to prospering economic opportunities and cultural awareness for the Wendat Band.

There is a strong presumption that the tribes and the Federal Government are firmly committed to the goal of promoting tribal self-government. *Id.* at 334. With the central focus on tribal self-government, the Court should be concerned with how the land is being used and the purpose behind it. Previously, this Court has stressed that the intention of Congress furthering tribal self-governance encompassed more than tribal management between members but rather to

include "tribal self-sufficiency and economic development." See *Bracker,* 448 U.S. at 143. Because of this overarching belief that the tribe should be able to govern their own affairs, they also have the power to manage the use of their territory and the resources of both members and non-members. See *Mescalero*, 462 U.S. at 324. This would include the ability to regulate economic activity within the reservation and liquidate the cost of governmental services by levying taxes. *Id.* at 336. Therefore, when a tribe constructs an enterprise under the authority of federal law, they should be preempted from imposing a TPT.

Here, the tribal interest in this commercial development is much greater than just the financial revenue that it will incur. The Wendat interest is centered around growing awareness for the culture of the people while simultaneously provides a revenue source to improve the quality of life. Because the tribe has the power to manage and use the territory in the best way they see fit, the commercial development is a platform to improve the quality of life of tribal members. The Wendat reservation constructed an enterprise, this commercial development, under the authority of federal law, and because of it, the state should be preempted from imposing a TPT because the interest of the tribe outweighs the interest of the state both culturally and fiscally.

ii. **State Interest**

While the tribe's interest in avoiding the TPT should be weighed heavily by the Court, the state interest should also be weighed as well under the *Bracker* balancing test. Traditionally, the exercise of State authority that would impose burdens on a tribal enterprise, "must ordinarily be justified by functions or services performed by the State in connection with the on-reservation activity". *Id.* at 336. A way in which the state can justify its taxation on the tribe can be through the general interest in raising revenue which can be used to facilitate growth for the tribe.

See *Warren Trading Post Co. v. Arizona, 380 U.S. 685 (1965)* and *Moe v. Salish & Kootenai Tribes*, 425 U.S. 463 (1980). The general interest is raising revenue is strongest when "the tax is directed at off-reservation value and when the taxpayer is the recipient of state services."
See *Washington v. Confederated Tribes of Colville Indian Reservation,* 447 U.S. 134, 157 (1980). However, the general interest in raising revenue is a burden to bear and is often not enough to overcome the tribal interest. See generally *Mescalero*, 462 U.S. 324 (1983). Therefore, when on-reservation conduct involving only Indians is at issue, "state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest". See *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 144 (1980) and *Moe v. Salish & Kootenai Tribes,* 425 U.S. 463, 480–481 (1980).

As seen in *Bracker*, the general interest of Arizona raising revenue was insufficient to permit Arizona's proposed intrusion in regard to the harvesting and sale of tribal timber.
See *Bracker,* 448 U.S. 136 (1980). Here, similar to White Mountain, the general interest of the State of New Dakota would be insufficient to collect a TPT on the Wendat Band. As the facts have indicated, it seems that the only interest the State has on the collection of this tax is to produce greater revenue for the state. Although the Court might be inclined to value the state interest as high because most of the goods sold by the complex were off-reservation goods and the land is not held in trust, there is still a strong presumption that the State of New Dakota is only interested in the collection of the TPT because of the revenue they would obtain.

The State of New Dakota has no authority to collect the TPT presuming the land is in Indian country because a state may not impose a tax that is preempted by tribal interests outweighing federal/state interest. The tribal interest as stake encompasses more than just the

general interest in raising revenue that the state possesses. Therefore, the state should be preempted from the collection of its TPT against a Wendat tribal corporation because of the doctrine of Indian preemption which would affirm the decision of the Thirteenth Circuit.

2. **A state may not impose a TPT that infringes upon the right of the reservation Indians in accordance with *Williams v. Lee*, 358 U.S. 217 (1959).**

The state of New Dakota has no authority to collect the TPT presuming the land is in Indian country because the state's power to collect the tax infringes upon the Band's own sovereign powers. This Court should affirm the majority decision of the Thirteenth Circuit's order to prevent the State of New Dakota from collecting its Transaction Privilege Tax (TPT) against a Wendat tribal corporation because of the doctrines of Indian infringement in accordance with *Williams v. Lee*, 358 U.S. 217 (1959).

The doctrine of Indian infringement can be centered around the idea of tribal sovereignty. *Id.* The Court has repeatedly recognized that the Indian tribes contain "attributes of sovereignty over both their members and their territory." See *United States v. Mazurie*, 419 U.S. 544, 557 (1975). Therefore, States may not collect taxes or take certain actions that would infringe upon the reservations ability to govern itself. *Id.* The Court should be focused on the most efficient way to promote tribal self-sufficiency and economic development. See*.* *Lee*, 358 U.S. at 143. If the tribe lacks the power to manage and control their own territory and resources, the tribe will never achieve full sovereignty because the government is infringing on their ability to be self-sufficient.

This is the case here, if the Court permits the collection of the TPT against a Wendat tribal corporation, then the tribe's ability to conduct their own business to better the tribe would be infringed upon. A way for the Band to promote their sovereignty through their land is often

facilitated through the promotion of tribal member's economic independence. This can be done through greater tribally run job opportunities like the jobs the commercial development would provide. If the Court allows for the State of New Dakota to levy a TPT on the tribe, the ability for the tribe's members to reach economic independence is diminished as the act of the tax infringes on the tribe's ability to conduct business as they wish. Therefore, the doctrine of Indian infringement is one way to prevent the State of New Dakota from collecting its TPT against a Wendat tribal corporation.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the United States Court of Appeals for the Thirteenth Circuit and hold that (1) The Topanga Cession remains part of the Wendat Band's reservation and any claim the Maumee Nation may have had to that land was eliminated following the enactment of the Maumee Allotment Act of 1908; and (2) the State of New Dakota should be prevented from collecting its TPT against a Wendat tribal corporation because of the Indian doctrines of preemption and/or infringement.

Respectfully Submitted,

January 2021 Counsel for Respondents