No. 20-1104

IN THE
Supreme Court of the United States

February Term 2021

MAUMEE INDIAN NATION,

Petitioner,

v.

WENDAT BAND OF HURON INDIANS,

Respondent.

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

BRIEF FOR RESPONDENT

Team 1030
Counsel for Respondent
January 4, 2021

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QUESTIONS PRESENTED

I. 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?

II. 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 THE FACTS

The Tribes. The Wendat Band of Huron Indians, a federally recognized tribe, has maintained traditional lands within what has now been incorporated as the State of New Dakota since time immemorial. R. at 4. The traditional Wendat lands overlap with those of the Maumee Indian Nation, another culturally distinct, federally recognized tribe. R. at 4.

Treaties on both sides of a river. In 1801, the Maumee and United States entered into the Treaty of Wauseon—ratified by Congress in 1802. R. at 16-17. The treaty created a natural "boundary line between the United States and Maumee Nation [of] the western bank of the river Wapakoneta." R. at 16-17. As part of the Treaty, the United States reserved "six miles square at the Wapakoneta [R]iver where it meets Fort Crosby[.]" R. at 16. After the Treaty of Wauseon, in the 1830s the Wapakoneta River moved approximately three miles to the west. R. at 5. (*See* Image 1).

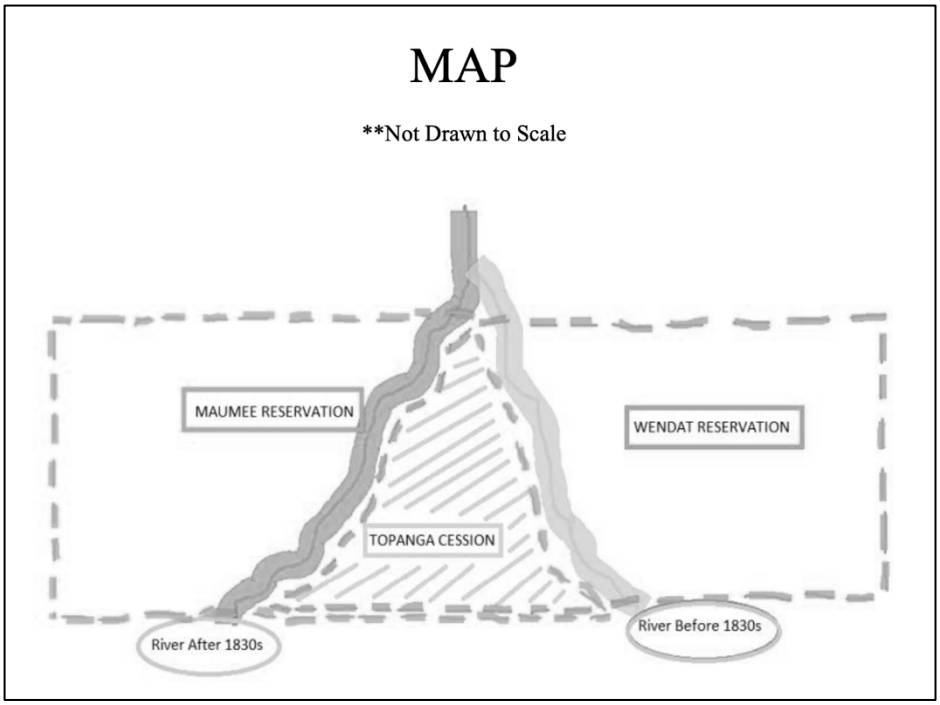

Image 1

In 1859, the United States entered into the Treaty with the Wendat recognizing Wendat rights to "those lands East of the Wapakoneta River." R. at 18. The Treaty recognized Wendat rights to lands east of the Wapakoneta River in 1859, but west of the river in 1801. R. at 5. Over the last eighty years, both the Wendat and Maumee have referred to the overlapping land as the Topanga Cession. R. at 5. (*See* Image 1).

Allotment Acts. Both the Maumee Nation and the Wendat Band Reservations were subject to allotment around the turn of the twentieth century. R. at 5. In 1892, Congress passed the Wendat Allotment Act, which surveyed "the western half of the lands reserved by the Wendat Band in the 1859 Treaty." R. at 15. The Wendat were entitled to payment for the land declared surplus, with that money to be "placed in the Treasury of the United States to the credit of all the Wendat Band of Indians as a permanent fund." R. at 15. The Wendat were paid approximately $2.2 million for the 650,000 acres not allotted to Wendat members. R. at 5.

In 1908, Congress allotted the Maumee Reservation pursuant to an agreement with the Maumee. R. at 13, 23-27. Under the Maumee Allotment Act, the Maumee "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 [to] the public domain by way of this act.' R. at 13. The Maumee were paid approximately $2 million for the 400,000 acres not allotted to Maumee members.

A shopping complex on contested land. Both the Wendat Band and the Maumee Nation have maintained the exclusive right to the lands within the Topanga Cession since at least 1937. R. at 5. The two tribes have attempted to minimalize inter-tribal conflict and have refrained from asking a United States federal court to resolve the dispute. R. at 7. Until this

case, no jurisdictional dispute regarding civil or criminal jurisdiction had reached the federal courts.

In 2013, the Wendat Band purchased a 1,400 acre parcel of land in fee from non-Indian owners located within the Topanga Cession. R. at 7. Two years later, the Band publicly announced its intention to construct a combination residential – commercial development on the parcel of land. R. at 7. The development would include public housing units for low-income tribal members, a nursing care facility for elders, a tribal cultural center, a tribal museum, and a shopping complex. R. at 7. The complex would be owned by a Wendat Corporation with 100% of corporate profits remitted quarterly to the tribal government. R. at 7-8. In response, the Maumee Nation approached the Wendat and replied that they believed the lands within the Topanga Cession to be within the Maumee Reservation. R. at 8. This meant that the Maumee expected the Wendat shopping complex, as a nonmember business, to pay the state of New Dakota's Transaction Privilege Tax ("TPT"), a portion of which would be remitted to the Maumee should the Topanga Cession be within their reservation. R. at 6. The Wendat Tribal Council responded that the Maumee were not entitled to the TPT as the Topanga Cession was within the Wendat Reservation and had been since the 1869 Treaty with the Wendat. R. at 8.

The state tax at the center of the dispute all. New Dakota imposes a Transaction Privilege Tax (TPT) on all businesses within the state. 4 N.D.C. § 212(5); R. at 5. The TPT requires all businesses operating in the state to obtain a license and pay a 3% tax on the gross income of the business. R. at 5-6. Under the tax statute, no tribal business operating within its own reservation or land held in trust by the United States must obtain a license or collect a tax. R. at 6. Under the statute, New Dakota will remit to each tribe the proceeds of the TPT collected from any entities operating on their reservations that are not owned by that tribe. R.

at 6. Recognizing the valuable mineral interest given up by the Maumee Nation, the Maumee are entitled to half of the TPT collected from all businesses in Door Prairie County outside of Indian Country. R. at 6.

II. STATEMENT OF THE PROCEEDINGS

District court. On November 18, 2015, the Maumee Nation filed a complaint against the Wendat Band in United States District Court for the District of New Dakota. R. at 8. The complaint asked the federal court to declare that the Topanga Cession was on the Maumee Reservation, thus any Wendat Band development in the Topanga Cession would require the Wendat to obtain a TPT license and pay the state tax. R. at 8.

Alternatively, the Maumee Nation asked the court to declare that the Topanga Cession was outside of Indian country—thereby entitling the Maumee to half of the TPT. R. at 8. The district court issued the Maumee Declaration stating that the Topanga Cession was within the Maumee Reservation and that any Wendat development with more than $5,000 in gross sales was required to obtain a TPT license and pay the state tax. R. at 9.

Court of Appeals. The Wendat Band appealed the district court's declaration to the United States Court of Appeals for the Thirteenth Circuit in September 2018. R. at 10. The case was held for just under two years awaiting this Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). R. at 10. Upon release of the *McGirt* opinion, the two parties submitted supplemental briefs to the Thirteenth Circuit. R. at 10.

On appeal, the Thirteenth Circuit reversed the district court decision and instead held the Topanga Cession is located on the Wendat Reservation. R. at 11. Additionally, the court of appeals found the state of New Dakota was prohibited from requiring the Wendat Band to procure a TPT license or pay the tax because the tax infringed on tribal sovereignty and was

subject to Indian preemption. R. at 11. The Maumee Nation filed a petition for writ of certiorari to this Court and it was granted on the questions presented. R. at 1–3.

SUMMARY OF THE ARGUMENT

Wendat Rights to the Topanga Cession. Upon ratifying the 1859 Treaty with the Wendat Band of Huron Indians, Congress abrogated Maumee treaty rights to the land within the present-day "Topanga Cession." *See* Treaty with the Wendat, March 26, 1859, 35 Stat. 7749. And while Congress later passed the Wendat Allotment Act in 1892, the Wendat Reservation was not diminished. Thus, the Topanga Cession continues to be part of Indian Country on the Wendat Reservation today.

In the event that the 1859 Treaty with the Wendat did not abrogate Maumee treaty rights to the Topanga Cession, Congress diminished Maumee claim to the Topanga Cession through the Maumee Allotment Act of 1908. At that time, rights to the Topanga Cession returned to the Wendat pursuant to the 1859 Wendat treaty rights, which were never diminished. Ultimately, whether right to the Topanga Cession is held by the Wendat or the Maumee, the lands of the Topanga Cession retain their status as Indian Country.

No state authority. Indian Tribes are distinct political communities with sovereign authority over their land. Due to their unique relationship with the United States, there are two independent but related barriers to state authority over tribal reservations and members; unlawful infringement on Indian sovereignty and Indian preemption of state authority.

Whether the Topanga Cession is on the Wendat reservation or the Maumee reservation, it is nonetheless in Indian country, meaning that if either of these barriers are satisfied, the state of New Dakota's excise tax will be prohibited. In this matter, both barriers prohibit New Dakota's tax. The state tax unlawfully infringes on either Tribe's inherent sovereignty because it disrupts their right to make their own laws and be ruled by them.

Additionally, federal law preempts the state tax from being enforced for two reasons: first, because of the preexisting comprehensive federal regulations regarding trade in Indian country; and second because the state tax attempts to exercise authority over on-reservation conduct involving only Indians. Therefore, both Indian infringement and preemption prevent New Dakota from collecting its Transaction Privilege Tax against the Wendat tribal corporation.

ARGUMENT

I. THE TOPANGA CESSION IS WITHIN THE INDIAN COUNTRY OF THE WENDAT RESERVATION.

A. The Treaty of Wendat Abrogated the Treaty of Wauseon, and thus, in 1859, the Wendat gained rights to the Topanga Cession.

By ratifying the 1859 Treaty with the Wendat, Congress abrogated the 1801 Maumee Treaty rights to the lands of the Topanga Cession. As a result, the lands within the Topanga Cession became a part of the Wendat Reservation.

While Congress ratified Maumee rights to the Topanga Cession in 1802, "the provisions of an act of Congress, passed in the exercise of its constitutional authority, … if clear and explicit, must be upheld by the courts, even in contravention of express stipulations in an earlier treaty [with foreign powers.]" *United States v. Dion*, 476 U.S. 734, 738 (1986) (citing *Fong Yue Ting v. United States,* 149 U.S. 698, 720 (1893)). This rule applies with equal force to congressional abrogation of Indian treaties. *Lone Wolf v. Hitchcock,* 187 U.S. 553, 566 (1903). Thus, when Congress acted within its constitutional authority to abrogate the 1801 treaty with the Maumee, this Court must uphold the abrogation.

And although "the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress," *Menominee Tribe v. United States*, 391 U.S. 404, 412 (1968), if

"Congress'[s] intention to abrogate Indian treaty rights is clear and plain," such abrogations are effective. *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339, 353 (1941).

To determine whether Congress's intent is clear and plain, this Court has "enunciated … different standards over the years[.]" *Dion*, 476 U.S. at 739. Moving away from requiring that Congress make "express declaration" of its intent to abrogate treaty rights such as in *Leavenworth, L., & G. R. Co. v. United States*, 92 U.S. 733, 741-42 (1876), this Court has moved towards allowing investigation into "the statute's legislative history and surrounding circumstances as well as to the face of the Act." *Dion*, 476 U.S., at 739, quoting *Rosebud Sioux v. Kneip*, 430 U.S. 584, 587 (1977). Ultimately, it is "essential" for there to 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." *Dion*, 476 U.S. at 739-40. This Court does not "construe statutes as abrogating treaty rights in 'a backhanded way.'" *Id.* at 739, citing *Menominee Tribe*, 391 U.S. at 412.

Based on the face of the 1859 Treaty with the Wendat, the legislative history, and the surrounding circumstances, Congress made plain and clear its intent to abrogate the Maumee claim to the land within the Topanga Cession. Additionally, these sources provide evidence that Congress considered the conflict between the 1801 and 1859 treaties, choosing to abrogate the former.

i. By recognizing Wendat ownership of the Topanga Cession land, the face of the 1859 Treaty suggests clear congressional intent to abrogate Maumee treaty rights.

The 1859 Wendat Treaty shows congressional intent to abrogate the Maumee's treaty rights to the Topanga Cession. The treaty with the Wendat was not a congressional act for one purpose that backhandedly altered another tribe's treaty rights. Rather, the explicit

purpose of the Treaty with the Wendat was specifically to establish the Wendat Reservation boundaries—boundaries that overlapped with Maumee land—deliberately resulting in the abrogation of Maumee treaty rights to the overlapping land.

Congress explicitly recognized Wendat right to the Topanga Cession land. In exchange for "cede[ing] to the United States their title and interest to lands in the New Dakota Territory," the Wendat were allowed to maintain "those lands East of the Wapakoneta River, with the Oyate Territory forming the southern border and the Zion tributary forming the northern border. The eastern terminus [being] … the line bordering the New Dakota Territory and the Oyate Territory." Treaty with the Wendat, March 26, 1859, 35 Stat. 7749. After the Wapakoneta River moved approximately three miles to the West in the 1830s, the western-most Wendat Reservation land overlapped with the eastern-most land recognized for the Maumee in the 1801 treaty—the land that was now on the Wendat side of the river (the Topanga Cession).

Because Congress explicitly gave the Wendat rights to the Topanga Cession land—at the implicit exclusion of others—the face of the treaty excludes the Maumee from asserting rights to that land, therefore abrogating their treaty rights to the area. Indeed, the Thirteenth Circuit found the implications of the treaty language to be so straightforward that the court quickly disposed of the issue, stating: "the Treaty with the Wendat of 1859 makes it clear the Maumee's Nation's claim to the Topanga Cession has been abrogated." *Wendat Band of Huron Indians v. Maumee Indian Nation*, 933 F. 3d 1088 (13th Cir. 2020); R. at 10.

Admittedly, the text of the 1859 Treaty does not expressly state that by ratifying the treaty, Congress would be abrogating the 1801 Treaty of Wauseon with the Maumee, nor does the face of the Treaty mention the Maumee Indian Nation or their reservation. But such an explicit statement is not a requirement to find abrogation under this Court's precedent. For

example, in *United States v. Dion*, this Court held that Congress intended to abrogate Indian treaty rights to hunt bald and golden eagle through passage of the Eagle Protection Act. *Dion*, 476 U.S. at 738. Though the act required Indian permits to take eagle feathers, Congress never explicitly mentions treaty rights, nor delineates specific treaty rights the act abrogates. Yet this Court was not deterred from finding treaty abrogation. *Id*., at 740.

Again, this Court found congressional abrogation of treaty rights absent explicit abrogation language in *South Dakota v. Bourland*, 508 U.S. 679, 687 (1993). In *Bourland*, this Court considered whether Congress "abrogated the [Cheyenne River Sioux] Tribe's rights under the Fort Laramie Treaty to regulate hunting and fishing by non-Indians in the area taken for the Oahe Dam and Reservoir Project." *Bourland*, 508 U.S. at 687.

In that case, two congressional actions were in question: the Flood Control Act and the Cheyenne River Act. The Flood Control Act created public recreational facilities on the lands taken for the Oahe Reservoir. *Bourland*, 508 U.S. at 689, citing 16 U.S.C. § 460d. The Act stated, "all such projects shall be open to public use generally" for various "recreational purposes," and mandated "ready access to and exit from such water areas … for general public use." *Id.*

The Court signaled that the Flood Control Act language alone was sufficient to abrogate the Tribe's rights to regulate hunting and fishing. But in the event that the Flood Control Act "lef[t] any doubt whether the Tribe retain[ed] its original treaty right to regulate non-Indian hunting and fishing on lands taken for federal water projects, the Cheyenne River Act extinguishe[d] all such doubt." *Bourland*, 508 U.S. at 690.

Under the Cheyenne River Act, Congress declared "that the sum paid by the Government to the Tribe for former trust lands taken for the Oahe Dam and Reservoir Project, 'shall be in final and complete settlement of all claims, rights, and demands' of the

Tribe or its allottees." *Id.*, citing 68 Stat. §1191. Though the wording of the Cheyenne River Act exhibited further proof Congress intended to abrogate the Cheyenne River Sioux Tribe's treaty rights, this Court did not rely on the wording of the Act to come to its holding.

Instead, this Court's opinion in *Bourland* centered on Congress's decision to covert the land to public use. This Court found that by "broadly opening up [tribal reservation lands] for public use, Congress, through the Flood Control and Cheyenne River Acts eliminated the Tribe's power to exclude non-Indians from these lands, and with that the incidental regulatory jurisdiction formerly enjoyed by the Tribe." *Bourland*, 508 U.S at 689.

If a congressional act opening lands to public use is a clear and plain abrogation of a tribal treaty right concerning the land, a congressional act which explicitly recognizes another Tribe's ownership of a tract of land should also be treated as a plain and clear abrogation of former treaty rights to that land. Thus, by recognizing Wendat title to the lands of the Topanga Cession, the face of the Wendat Treaty plainly and clearly indicates congressional desire to abrogate the former treaty with the Maumee.

ii. The legislative history evinces Congress's intent to abrogate the Maumee Treaty.

The legislative history of the Wendat Treaty shows both Congress's consideration of the conflict between the 1859 and 1801 treaties and Congress's intent to abrogate the treaty rights of the Maumee. First, the legislative history shows Congress was aware of the 1801 treaty with the Maumee and the lands delineated to the Maumee in that treaty. For example, in his speech, Senator Solomon Foot stated that "[i]n the many years since the first treaty was made at Wauseon, the Maumee have been reduced in number and no longer inhabit parts of their territory." Globe, 35th Cong., 2nd Sess. 5411-5412 (1859) (statement of Sen. Foot). Senator Foot's statement shows that members of Congress were: 1. aware of the Treaty of

Wauseon; 2. understood the bounds of the Maumee territory; and 3. contemplated where members of the Maumee Nation were living.

The conclusion that Congress was well aware of the Maumee Treaty is bolstered by another Senator Foot statement: "[b]eginning with the Maumee, the Indians of New Dakota have slowly yielded their claims to the bulk of the territory and even now the lands around Fort Crosby are becoming a center for commercial activity." *Id.* Again, the senator's statements reveal Congress took particular notice of the Maumee Treaty—as it was the first treaty in New Dakota—and were aware of the precise location of the Maumee Reservation around Fort Crosby. By understanding where the Maumee Treaty lands were and therefore, where the Wendat lands overlapped, Congress "actually considered the conflict between its intended action on the one hand and the Indian treaty rights on the other," as required for abrogation of treaty rights by the Court in *Dion*, 476 U.S. at 739-40.

Not only does the legislative history show that Congress considered the Maumee's treaty rights, but it also shows Congress's incentives to abrogate those rights. Congress "presumably" only "abrogate[s] provisions of an Indian treaty … 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." *Id.*, at 738. In this case, the legislative history shows that Congress abrogated the provisions of the Maumee treaty based on the belief it was at the time—though we may question their wisdom now—in the best interest of the country and the Indians themselves. For example, Senator Foot stated that he hoped the Wendat would "benefit by example" from the Maumee and would "learn from the many new residents of their neighbors" around Fort Crosby. Globe, 35th Cong., 2nd Sess. 5411-5412 (1859). Congress wanted to abrogate the Treaty of Wauseon in order for the Wendat to be near both the Maumee and Fort Crosby.

Ultimately, the legislative history provides sufficient evidence that Congress considered the Maumee Treaty of Wauseon; understood that by ratifying the Treaty with the Wendat, they would be abrogated the Maumee Treaty; and believed such abrogation would be the best course of action for all parties.

iii. The surrounding circumstances of the 1859 treaty show that Congress intended to abrogate the 1801 treaty.

Based on the nature of the reservation boundaries delineated in both treaties, the surrounding circumstances show that Congress intended to abrogate the 1801 Treaty of Wauseon. The Maumee Treaty created a boundary line 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. Additionally, under Article VI of the treaty, the United States and Maumee agreed that "the lands east, south, and west of the lines described in the third article … belong to the United States[.] Treaty of Wauseon, Oct. 4, 1801, 7 Stat. 1404.

The Maumee Treaty did not create an arbitrary boundary following a straight line of latitude. Rather, by recognizing Maumee rights to the lands west of the Wapakoneta River and reserving lands east of the river to the United States, Congress created a natural boundary line that gave both parties use of an important waterway in the region. Thus, when Congress recognized Wendat rights to the land east of the Wapakoneta River in the 1859 Treaty, again Congress utilized the natural water boundary to allow both Tribes access to the important waterway.

Such a conclusion is bolstered by the fact that the Wendat Treaty was signed at the Wapakoneta River where the United States representatives and "the chiefs, head men, and warriors of the Wendat Indians have hereunto set their hands at Wapakoneta River[.]" Treaty with the Wendat, March 26, 1859, 35 Stat. 7749. By placing such importance on the

Wapakoneta River in the Treaty, the surrounding circumstances show that Congress wished for the Wendat to have the lands abutting the river to the east. The Maumee would still have the vital access to the river from the west as guaranteed in their own treaty of 1801.

Admittedly, the legislative history does not mention the movement of the Wapakoneta River. And while there's an argument that by failing to mention the movement of the river, Congress may not have realized that it was recognizing Wendat Title to lands already reserved to the Maumee, such an argument is unpersuasive based on the surrounding circumstances.

Congress surely knew of the movement of the Wapakoneta River based on the importance of Fort Crosby to the United States. Fort Crosby was reserved for the United States in the 1801 Treaty with the Maumee, where the United States "sav[ed] and reserve[ed] for the establishment of trading posts, six miles square *at the Wapakoneta river where it meets Fort Crosby*, and the same at the portage on that branch of the river into the Great Lake of the North." Treaty of Wauseon, Oct. 4, 1801, 7 Stat. 1404 (emphasis added). Again, Fort Crosby was mentioned in the 1859 Treaty with the Wendat and the fort continued to be "a center of commercial activity" at the time of the treaty. Globe, 35th Cong., 2nd Sess. 5411-5412 (1859).

If the fort was on the Wapakoneta River in 1801, and the river changed course in 1830, Congress would have been aware of potential relocations of the fort due to river movement. At the very least, the change in river location would have altered transportation to and from the important outpost. Thus, Congress would have understood that the Wapakoneta River had changed course whether or not that movement was mentioned in the legislative history.

Additionally, as Fort Crosby was so important to the United States, Congress wanted the Fort to border both the Maumee and Wendat Reservations. Supporting this conclusion, the Wendat were to receive their payment guaranteed by the treaty "by the Indian agent at Fort Crosby." Treaty with the Wendat, March 26, 1859, 35 Stat. 7749.

Taken as a whole, when added to the face of the act and the legislative history, the surrounding circumstances confirm that Congress's intent was to abrogate the Treaty of Wauseon, giving the Wendat right to the Topanga Cession.

B. The Wendat Allotment act did not diminish the Wendat Reservation

After recognizing Wendat rights to the lands of the Topanga Cession, Congress did not diminish the Wendat Reservations through the Wendat Allotment Act, and thus, the lands are still Wendat Indian Country today. It was the "Legislature's general" understanding that the "practice of taking allotment" was "a first, not final, step toward disestablishment and dissolution" of reservations. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2466 (2020). And while some surplus land acts diminished reservations, see, *e.g., Kneip*, 430 U.S. 584 (1977); *DeCoteau v. District County Court*, 420 U.S. 425 (1975), other surplus land acts did not, see, *e.g., Mattz v. Arnett*, 412 U.S. 481 (1973); *Seymour v. Superintendent*, 386 U.S. 351 (1962). Ultimately, "[t]he effect of any given surplus land act depends on the language of the act and the circumstances underlying its passage." *Solem v. Bartlett*, 465 U.S. 463, 469 (1984).

i. The text of the Wendat Allotment Act does not diminish the Wendat Reservation.

The language of the Wendat Allotment Act does not clearly evince congressional will to diminish the Wendat Reservation. This Court has "said time and time again, once a reservation is established, it retains that status 'until Congress explicitly indicates otherwise.'" *McGirt v. Oklahoma*, 140 S. Ct. at 2469, quoting *Solem*, 465 U.S. at 470. Thus, in order for a surplus land act to diminish a reservation, this Court "requires that Congress

clearly evince an 'intent to change boundaries' before diminishment will be found.'" *Solem*, 465 U.S. at 470, quoting *Rosebud Sioux v. Kneip*, 430 U.S. at 615. The "most probative evidence of congressional intent is the statutory language used to open the Indian lands." *Solem*, 465 U.S. at 470.

While disestablishment has "never required any particular words," clear congressional intent commonly involves "an explicit reference to cession or other language evidencing the present and total surrender of all tribal interests." *McGirt*, 140 S. Ct. at 2462-63. When that explicit language is "buttressed by an unconditional commitment from Congress to compensate the Indian tribe for its opened land, there is an almost insurmountable presumption that Congress meant for the tribe's reservation to be diminished." *Solem*, 465 U.S. at 470-71.

The 1892 Wendat Allotment Act does not use explicit reference to cession or other language evidencing the present and total surrender of all tribal interests. Congress "knows how to withdraw a reservation when it can muster the will." *McGirt*, 140 S. Ct. at 2462. Congressional legislation diminishing reservations has included language such as "explicit reference to cession," or directing tribal lands shall be "restored to the public domain." *Hagen v. Utah*, 510 U.S. 399, 412 (1944). Congress might also describe a reservation as being "discontinued," "abolished," or "vacated." *Mattz v. Arnett*, 412 U.S. at 504. The Wendat Allotment Act contains no such language.

Equally as important as the act's lack of cession language is the language Congress actually used; the same language this Court has previously held results in a finding of no diminishment. The Wendat Allotment Act states that "all money accruing from the disposal of said lands in conformity with the provisions of this act shall be placed in the Treasury of

the United States to the credit of all the Wendat Band of Indians as a permanent fund." Wendat Allotment Act, P.L. 52-8222 (Jan. 14, 1892).

In *Seymour*, this Court found that when "proceeds from the disposition of lands … shall be 'deposited in the Treasury of the United States to the credit of the Colville and confederated tribes of Indians[,]" as opposed to the credit of "general public use," such language is clear evidence the purpose of the act was not to destroy the existence of the Colville Indian reservation. 368 U.S. at 355–56. Additionally, in *Mattz v. Arnett*, this Court found that when proceeds from the allotment of reservation land were "held in trust for the 'maintenance and education,' not the removal, of the Indians[,]" such a wording supported the holding that the reservation was not diminished. 412 U.S. at 504. Thus, by placing the proceeds in the Treasury "to the credit of" the Wendat, Congress used language that explicitly evinced a desire not to diminish the reservation.

Admittedly, as the district court pointed out in this case, the Wendat Allotment Act "clearly paid a sum certain for the surplus lands[.]" *Maumee Indian Nation v. Wendat Band of Huron Indians*, 305 F. Supp. 3d 44 (D. New Dak. 2018); R. at 9. Indeed, the United States agreed "to pay into the Treasury, in the name of the Wendat Band, the sum of three dollars and forty cents for every acre declared surplus," limited to a maximum of "two-million and two-hundred-thousands dollars in total and complete compensation." Wendat Allotment Act, P.L. 52-8222 (Jan. 14, 1892). And while dicta in this Court's opinion in *McGirt* stated that an "unconditional commitment to compensate the Indian tribe for its opened land" evinces Congressional will to withdraw a reservation, this Court has never held that such language alone would result in diminishment of a reservation. *See DeCoteau*, 420 U.S. 425 (finding diminishment only upon explicit cession language *and* unconditional compensation). Under

this Court's precedent, the mere agreement to pay sum certain is not sufficient to find diminishment absent explicit cession language, which was not present in this act.

In *McGirt*, this Court definitively stated that in the context of reservation diminishment, "[t]here is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms." *McGirt*, 140 S. Ct. at 2469. Extratextual sources can only "clear up … not create" ambiguity about a statute's original meaning." *Id.*, citing *Milner v. Department of Navy*, 562 U.S. 562, 574 (2011). Because a congressional act that diminishes a reservation must show clear congressional intent, and the Wendat Allotment Act both fails to show clear congressional intent on its face, while also presenting affirmative evidence of purposefully not diminishing the Wendat Reservation, this Court need not look to extratextual sources to create ambiguity.

ii. Investigation into extratextual sources does not create a conclusion that the Wendat Reservation was diminished.

If this Court, however, believes it necessary to look to extratextual sources for guidance on whether the Wendat Reservation was diminished as a result of the Wendat Allotment Act, it should do so cautiously. There has been "no case in which this Court has found a reservation disestablished without first concluding that a statute required that result." *McGirt*, 140 S. Ct. at 2470. And as this Court warned in *McGirt*, to follow "down that path … would only serve to allow States and courts to finish work Congress has left undone, usurp the legislative function in the process, and treat Native American claims of statutory right as less valuable than others." *Id*. Relying on extratextual sources to find diminishment absent explicit textual evidence cannot "be reconciled with [this Court's] normal interpretive rules, let alone [this Court's] rule that disestablishment may not be lightly inferred and treaty rights are to be construed in favor, not against, tribal rights. *Id*.

But even upon looking to extratextual sources, there is still no clear evidence of Wendat Reservation diminishment. This Court's opinion in *Solem* lays out the potentially relevant sources of extratextual evidence. First, "[w]hen events surrounding the passage of a surplus land act … unequivocally reveal a widely-held, contemporaneous understanding that the affected reservation would shrink as a result of the proposed legislation," this Court has been willing to infer that Congress did intend to diminish the reservation. *Solem*, 465 U.S., at 471.

The most persuasive evidence in favor of diminishment coming from the legislative history is reference to the Wendat Reservation returning to public domain, but the use of that language alone is not sufficient to create ambiguity. The Wendat Allotment Act includes a Department of the Interior report indicating that the unallotted land will "be added to the public domain," and Mr. Harvey stated that certain lands would be "opened to the public domain by way of allotment." 23 CONG. REC. 1777 (Jan. 14, 1892).

While such language when used in a statute evinces diminishment, mention of the phrase "public domain" within the legislative history does no in and of itself create an "unequivocal" shared understanding by Congress that the act would diminish the reservation. Importantly, not all Congress members made statements to the effect that the lands would be opened to the public domain, so there is no conclusive evidence of how many Congress members affirmed that belief. Additional, had Congress intended to open the lands to the public domain, they had the opportunity to add such explicit language to the statute, yet chose not to do so.

Second, when determining whether extratextual sources support diminishment, "[t]o a lesser extent, [this Court has] also looked to events that occurred after the passage of a surplus land act to decipher Congress's intentions," such as "who actually moved onto

opened reservation lands." *Solem*, 465 U.S. at 471. But as this Court clarified in *McGirt*, "[o]ut of context, statements like these [from the Solem opinion] might suggest historical practices or current demographics can suffice to disestablish or diminish reservations … But, in the end, *Solem* itself found these kinds of arguments provided 'no help' in resolving the dispute before it." *McGirt*, 140 S. Ct. at 2468-69. Thus, it is questionable whether such evidence is of any use to the Court in this case.

Regardless, the identity of the Topanga Cession residents after the 1892 Wendat Allotment Act supports a finding that the Topanga Cession lands were not diminished. In 1890, two years before the Act, the Topanga Cession population was 97.0% American Indian/Native Alaskan. R. at 7. Eight years after the Act, in 1900, the Topanga Cession continued to be 92% American Indian/Native Alaskan. R. at 7. After the allotment act, white settlers did not flood the area at the exclusion of Indians, supporting a finding against diminishment.

As discussed above, this Court may only look to extratextual evidence when the statute is not clear. Because the Wendat Allotment Act clearly did not use language to effectively diminish the Wendat Reservation, this Court should not look to extratextual sources. But even upon investigation into extratextual evidence, ultimately, there is still no clear congressional intent to diminish Wendat rights to the Topanga Cession. Thus, the Wendat retain their 1859 Treaty rights to the Topanga Cession today.

C. If the Treaty of Wendat did not abrogate the Treaty of Wauseon, the Maumee Allotment Act of 1908 diminished the Maumee reservation, returning rights to the Topanga Cession to the Wendat pursuant to the 1859 Wendat Treaty.

If the 1859 Wendat Treaty did not abrogate the Maumee Treaty of Wauseon—thereby maintaining Maumee rights to the Topanga Cession—the Maumee Allotment Act diminished

the Maumee Reservation in 1908. Upon Maumee Reservation diminishment, rights to the Topanga Cession returned to the Wendat pursuant to the 1859 Wendat Treaty.

i. The Maumee Allotment Act diminished the Maumee Reservation lands of the Topanga Cession.

In contrast to the Wendat Allotment Act, the Maumee Allotment Act did diminish the Maumee Reservation. As discussed above, "[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests strongly suggests that Congress meant to divest from the reservation all unallotted opened lands." *Solem*, 465 U.S., at 470, citing *DeCoteau*, 420 U.S. at 444-445.

Unlike the Wendat Allotment Act, the Maumee Allotment Act uses definitive cession language on the face of the act. The act states "[t]he Indians have agreed to consider the entire eastern quarter surplus and *to cede their interest in the surplus lands* to the United States[.]" Maumee Allotment Act of 1908, P.L. 60-8107 (May 29, 1908) (emphasis added). Additionally, the lands would "be *returned to public domain* by way of this act." *Id*. (emphasis added).

There can hardly be a more explicit statement of cession than agreeing to "cede [a tribe's] interest in the surplus land." *Id*. And as this Court found in *Hagen v. Utah*, when Congress directs lands to be "restored to the public domain," such as in this act, that language also evidences Congressional diminishment. 510 U.S. 399, 412 (1944). These statements create clear congressional intent to diminish the Maumee Reservation.

As discussed above, when the face of the act is clear, this Court need not look to extratextual sources. *See McGirt*, 140 S. Ct. at 2470. But in the case of the Maumee Allotment Act, investigation into extratextual evidence affirms that the act diminished the Maumee Reservation.

The act itself was a result of negotiations between United States representatives and the Maumee. As Mr. Pray stated in the legislative history, "an agreement was entered into which was ratified by 95 per cent of the Indians of the reservation." 42 CONG. REC. 2345 (May 29, 1908). And Mr. Hackney's statements made clear that the "bill conform[ed] to the terms of that written agreement in every essential detail." *Id*.

As part of the agreement between the U.S. and the Maumee, the Maumee agreed to cede their interest in the surplus land. Congress unequivocally understood that both the agreement and the words of the act resulted in the diminishment of the reservation. As this Court stated in *Solem*, "[w]hen events surrounding the passage of a surplus land act … unequivocally reveal a widely-held, contemporaneous understanding that the affected reservation would shrink as a result of the proposed legislation," this Court has been willing to infer that Congress did intend to diminish the reservation. 465 U.S. at 471. Furthermore, by entering into the agreement with the United States, even the Maumee understood that their reservation would be diminished. Thus, both the face of the Maumee Allotment Act and extratextual sources make clear that Maumee rights to the Topanga Cession were diminished by the act.

ii. Upon diminishment of the Maumee Reservation, the lands of the Topanga reverted back to Wendat ownership due to the terms of the 1859 Wendat Treaty.

When the Maumee Nation's rights to the Topanga Cession were diminished by the Maumee Allotment Act, the Topanga Cession returned to Wendat Indian Country. In 1859, Congress explicitly recognized Wendat rights to the lands of the Topanga Cession. And as discussed extensively in section B above, the Wendat rights to their reservation were not diminished by the Wendat Allotment Act. As this Court stated in *McGirt*, "it's no matter how many other promises to a tribe the federal government has already broken. If Congress

wishes to break the promise of a reservation, it must say so." 140 S. Ct., at 2462. Thus the Wendat retain their rights through the Maumee Allotment.

Ultimately, the Topanga Cession is undoubtedly within Indian Country, either because the Wendat have exclusive right to the land after Maumee Reservation allotment, or the Maumee Reservation was not abrogated or diminished, and the Maumee also have right to the land.

II. BECAUSE THE TOPANGA CESSION IS LOCATED IN INDIAN COUNTRY, BOTH THE DOCTRINE OF INDIAN INFRINGEMENT AND PREEMPTION PREVENT NEW DAKOTA FROM COLLECTING ITS TRANSACTION PRIVILEGE TAX AGAINST THE WENDAT TRIBAL CORPORATION.

For decades, this Court has consistently reiterated that Indian Tribes are distinct political communities with territorial boundaries within which their authority is exclusive. *McGirt* at 2477. Because the "policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation's history," there are significant barriers to state taxation within Indian lands. *Id*. at 2476. Specifically, this Court has described two "independent but related barriers to the assertion of state regulatory authority over tribal reservations and members." *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980).

The first barrier to state authority in Indian country is that it may "unlawfully infringe on the right of the reservation Indians to make their own laws and be ruled by them." *Id*. The second barrier is that such state regulation may be preempted by federal law. *Id*. These two barriers are considered independent of each other, and upon a showing of either one, the state cannot regulate Indian activity undertaken on the reservation. *Id*. at 143. Because the New Dakota Transaction Privilege Tax both infringes on the Tribal sovereignty and is preempted by federal law, the state has not authority to require the Wendat Band to procure a TPT license or pay the tax.

A. The TPT infringes on the Wendat Band's Tribal sovereignty.

The Wendat Band's future commercial center in the Topanga Cession is within the Wendat Reservation and thus under their sovereign authority. Indian tribes, whose claims to sovereignty long predate that of the United States, have the general authority to control economic activity within their jurisdictions. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982); *McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164, 172 (1973). This Court has consistently maintained there is a presumption that "the States have no power to regulate the affairs of Indians on a reservation," and that this presumption holds, "absent governing Acts of Congress" saying otherwise. *Williams v. Lee*, 358 U.S. 217, 220 (1959).

This Court's vast jurisprudence on the issue of Indian infringement and state taxation has made it abundantly clear that in "recognition of the sovereignty retained by the Indian tribes even after formation of the United States, Indian tribes and individuals generally are exempt from state taxation within their own territory." *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 764 (1985). In the end, the main question in deciding if a state action infringes on Tribal sovereignty "has always been whether the state action infringed on the right of the reservation Indians to make their own laws and be ruled by them." *Williams* at 220.

A crucial, early step in an infringement analysis is to assess any relevant Tribal treaties with the United States to determine the extent of the Tribe's sovereignty. *McClanahan* at 173. In *McClanahan*, after reviewing the Navajo Nation's 1868 treaty, the Court stated that the purpose of the treaty was to reserve lands solely for the use and occupation of the Navajo Tribe, which therefore established the lands as within the exclusive sovereignty of the Navajo people. *Id*. at 174–75. Even though the treaty did not explicitly state that the Navajo people were to be free from state law or taxes indefinitely, the Court explained that when interpreting Indian treaties, ambiguities are to be resolved in favor of the

Tribe and that exemptions from state control need not be expressly stated. *Id*. Therefore, the *McClanahan* Court interpreted the treaty to preclude state tax law to Indians on the Navajo Reservation because it would infringe on their sovereignty protected in the treaty. *Id*.

Based on this analysis, New Dakota's state tax infringes on the Wendat Band's inherent sovereignty. First, the Treaty with the Wendat of 1859 reveals that the Wendat Band was to be considered the exclusive sovereign over their reservation. In the 1859 Treaty, the Wendat Band ceded their title and interest to lands in the New Dakota Territory *except* for the lands east of the Wapakoneta River. Treaty with the Wendat, March 26, 1859, 35 Stat. 7749. Because the Treaty explicitly differentiated between the land the Band ceded and the land it withheld, it can be inferred that those lands reserved were to be solely for the use and occupation of the Wendat Band as sovereign, just as the Navajo lands were in *McClanahan*. *Id*. Just as the Navajo Treaty did in *McClanahan*, the Wendat Band's Treaty shows that their reservation lands were considered sovereign lands and therefore exempted from state taxation because it would infringe on the Band's sovereignty.

As a result, because the Topanga Cession is within the lands reserved for the Wendat Band in the 1859 Treaty, the New Dakota tax would infringe on the Wendat Bands' right to make their own laws within their reservation and be ruled by them. As sovereign, it is the Wendat Band, and not the state of New Dakota, who has the inherent authority to control economic activity in the Topanga Cession because it is within their reservation. As such, this Court's time-honored presumption that states have no power to regulate the affairs of Indians on a reservation stands because New Dakota's tax unlawfully infringes on the tribe's sovereignty.

B. Federal law preempts New Dakota's taxing authority.

Although New Dakota's unlawful infringement on the Wendat Band's inherent sovereignty is sufficient on its own to bar New Dakota's exercise of state authority in the Topanga Cession, the state's authority is also preempted by federal law. The standard of preemption in Indian law is different from the standard of preemption that has emerged in other areas of law. In the Indian law context, the tradition of Indian sovereignty over reservations and its members informs whether state authority has been preempted by federal law in this field. *Bracker*, 448 U.S. at 143. Sovereignty plays an important role in an Indian preemption analysis due to a "firm federal policy of promoting tribal self-sufficiency and economic development," as well as federal policy "encouraging tribal independence." *Id*. at 143–44. Just as in the infringement barrier analysis, ambiguities in federal law "have been construed generously in order to comport with these traditional notions of sovereignty" and there is no requirement for an express, congressional statement "to find a particular state law to have been preempted by operation of federal law." *Id*.

Because the Topanga Cession is within the Wendat Band's reservation, a preemption analysis is relatively simple. This Court has stated continuously that "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. *Id*. In other words, it is settled law that unless Congress instructs otherwise, a "state's excise tax is unenforceable if its legal incidence falls on a Tribe or its members for sales made when in Indian country." *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 453 (1995). This Court has utilized this "categorical approach" a number of times, holding state taxes to be unenforceable when the taxes fell directly on a tribe for activity in their Indian country based on the general rule that tribes are

immune from state taxation *Id*. at 458, 464; *Wagnon v. Prairie Band of Potawatomi Nation*, 546 U.S. 95, 102 (2005).

Furthermore, federal law in this area is already extensive. Namely, federal law includes section 8 the United States Constitution, where Congress is designated the sole power authorized to "have Power … to regulate Commerce with foreign Nations, and among them the several States, and with the Indian Tribes." US Const. art. I, § 8, cl. 3. Federal law also regulates the legal incorporation of Indian businesses, which the Wendat Band adhered to. R. at 7; 25 U.S.C. § 5124. Additionally, the federal government already exclusively regulates trade within Indian reservations in tandem with the tribal governments and their applicable laws. 25 U.S.C. §§ 261-264. This Court has previously held state taxes were preempted by even less federal regulations and statutes than this because the federal law was "sufficient to show that Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens." *Central Machinery Co. v. AZ State Tax Comm'n*, 448 U.S. 160, 163–164 (1980).

In this case, New Dakota's state tax aims to fall directly on the Wendat Band and the gross sales of a tribal business providing services to tribal members in its own reservation. As a result, the state tax is firmly preempted by this Court's categorical approach because the legal incidence of the tax falls on a Wendat Band-owned corporation doing business with its members in its own reservation. There is no evidence of a cession of either tribal or federal control in this area and no federal statutes permitting the state of New Dakota to levy an excise tax on Indian tribes inside Indian country. Based on the firm federal policy of promoting tribal self-sufficiency, economic development, tribal independence, and the extent of federal law already regulating tribal business relations, New Dakota's state authority is preempted.

C. Alternatively, even if the Topanga Cession was declared to be on the Maumee Reservation, the tax is still prohibited.

i. The TPT infringes on Maumee sovereignty.

Just as in the analysis involving tribal sovereignty of the Wendat Band, if the Topanga Cession was declared to be within the Maumee reservation, the New Dakota state tax would still infringe on the Maumee sovereignty. This Court's holding in *Williams* was clear and concise: the question has always been whether the state action infringed on the right of the reservation Indians to make their own laws and be ruled by them. *Williams* 358 U.S. at 220. Congress, in addition to Tribal courts, continue to promote and acknowledge that the tribal power to tax is one of the tools necessary to accomplish self-government and territorial control and it is the Tribes' authority as sovereign to control economic activity within its jurisdiction. *Merrion* 455 U.S. at 137–39; *In re Atkinson Trading Co., Inc.*, 1 Am. Tribal Law 451, 458 (Navajo, Aug 22, 1997). Furthermore, the cases where this Court has found that state authority over the activities of nonmembers on reservations did not infringe on tribal sovereignty have been in cases involving non-Indian conduct on the reservation, not cases involving nonmember Indians. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331 (1983).

While the Maumee tribe would have every right, as sovereign, to levy a tax against non-member Indians doing business within their reservation, the state cannot infringe on that sovereign right. Even though there is precedent for double taxation, as in both state and tribal taxation of non-members, those cases also involved non-Indian activity on reservation lands. *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989). In this matter, the Maumee tribe is effectively stripped of their ability to levy their own taxes and control economic relations on their reservation because the state tax forces their hand. It is unlikely that nonmember businesses, such as the future Wendat Band center, would be willing to stay, or

even be able to afford to stay, on the reservation if they were asked to pay excise taxes to two sovereign authorities. As a result, the Maumee tribe's sovereignty is effectively infringed upon because they are placed in a position where they cannot exercise their taxing power necessary for self-government.

ii. The TPT is preempted by federal law.

Even though Indian infringement is enough to invalidate New Dakota's state tax if the Topanga Cession is declared to be on the Maumee reservation, the tax is also preempted by federal law. As discussed earlier, this Court in *Bracker* specifically explained that state law is generally inapplicable when dealing with on-reservation conduct involving Indians. *Bracker*, 448 U.S. at 144. However, if the Topanga Cession is declared Maumee land, Wendat commercial complex operations would be classified as nonmember Indian conduct. The question of whether the *Bracker* presumptive preemption rule applies to nonmember Indians on an Indian reservation has not yet been definitively answered. Regardless, even if this Court's categorical ban on state authority over Indians in Indian country does not apply to nonmember Indians on a reservation, the New Dakota state tax would still not pass the *Bracker* analysis.

The *Bracker* Court explained that when a state asserted authority over the conduct of non-Indians engaging in activity on the reservation, then the Court would examine the language of relevant treaties and federal statutes and inquire into the "nature of the state, federal, and tribal interests at stake" in order to "determine whether, in the specific context, the exercise of state authority would violate federal law" and therefore, be preempted. *Bracker* at 144–45. Furthermore, if the state tax places financial burdens on the Indians whom it deals with in addition to burdens that Congress or the tribes have already prescribed, the disturbance and disarrangement of the statutory plan set up by Congress would be

considered unfair treatment. *Warren Trading Post Co. v. AZ State Tax Comm'n*, 380 U.S. 685, 691 (1980). Finally, in cases dealing with state taxation of non-Indians doing business on Indian lands, this Court has consistently found state taxes and authority to be preempted when the federal government has already undertaken the role of regulating reservation trading because "there is no room for the states to legislate on the subject." *Central Machinery*, 448 U.S. at 166; *Warren Trading Post* at 685; *Ramah Navajo School Bd. Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, 847 (1982).

Applying the *Bracker* test New Dakota's state tax would be preempted. As discussed above, there is extensive federal law already regulating commerce and business practices with Tribes, weighing in favor of the tax being preempted by federal law seeing as there is no room for the state to add its own authority. US Const. art. I, § 8, cl. 3; 25 U.S.C. § 5124; 25 U.S.C. §§ 261-264. By allowing the state to add an additional burden to nonmember Indians attempting to do business on the Maumee reservation, the economic interest of the tribe is at stake—nonmember Indians and non-Indians may instead choose to take their business elsewhere, thus preventing the Maumee from being able to benefit off of any excise tax. Therefore, the interests of the federal government in protecting its comprehensive regulation from being disturbed and the interests of the Tribe in growing its economy outweigh the low interests of the state in collecting a tax in Indian country—a tax that will ultimately be remitted back to the Tribe, not retained by the state.

It is worth noting that in *Washington v. Confederated Tribes of Colville Indian Reservation*, a case that precedes *Bracker* and its progeny, this Court found that state authority affecting nonmember Indians on an Indian reservation did not exempt the Indians from state taxation regarding cigarettes. *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 161 (1980). However, the rationale in that case was that

the state interest in taxation outweighed any tribal interest that may have existed in preventing the state from imposing the tax. *Id*.

Unlike in *Washington v. Colville*, in this case, as discussed above, New Dakota's state tax would infringe on the Maumee's sovereign ability to impose a tax of their own. This infringement on the right of the Tribe to control its own economic activity is fundamentally within the scope of tribal interests. The Maumee Tribe has insisted it is in their best interest for the Wendat commercial complex to be built in the Topanga Cession because of the positive effects the complex would deliver to the Maumee economy. R. at 8. Overall, the Maumee Nation's interest in preserving its sovereignty and right to regulate its own economy outweigh New Dakota's interest in collecting a tax that will not even be kept by the state.

Ultimately, whether the Topanga Cession is on the Wendat Reservation or the Maumee Reservation, it is nonetheless in Indian country. Even though it is not necessary for the doctrines of Indian infringement and preemption to apply simultaneously, in this matter, New Dakota would be prevented from collecting its state tax from the Wendat corporation in the Topanga Cession under either doctrine.

CONCLUSION

For the foregoing reasons, Respondent Wendat Band of Huron Indians, respectfully requests this Court to affirm the judgment of the Thirteenth Circuit and remand back to the District Court with instructions to withdraw and reissue its Declaration in a manner consistent with the Thirteenth Circuit's opinion.

Respectfully submitted,
/s/ Team No. T1030
January 4, 2021
Counsel for Respondent

APPENDIX

4 N.D.C. §212

(1) Every person who receives gross proceeds of sales or gross income of more than $5,000 on transactions commenced in the 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 course 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 centralizations 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.