No. 20-1104

In The
Supreme Court of the United States

MAUMEE INDIAN NATION,
*Petitioner,*
*v.*
WENDAT BAND OF HURON INDIANS
*Respondents.*

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

# PETITION FOR WRIT OF CERTIORARI

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HURON, NEW DAKOTA

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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

### A. *STATEMENT OF PROCEEDINGS*

"Each Tribe has a treaty with the United States that reserves a set of lands in what is now the State of New Dakota." *Maumee Indian Nation v. Wendat Band of Huron Indians*, 305 F. Supp. 3d 44 (D. New Dak. 2018). The Maumee Indian Nation was established by the Treaty of Wauseon, which reserved the lands west of the Wapakoneta River. This treaty was ratified by Congress in 1802. In the 1830's the river moved about three miles west. Several years later in 1859, the Treaty of Wendat reserved the lands east of the Wapakoneta River to the Wendat Band of Huron Indians (herein Wendat Band). This land in between the reservations is referred to as the "Topanga Cession". The lower court of New Dakota held that the Topanga Cession is within the Maumee Reservation and that the Wendat Band development in this area with more than $5,000 in gross sales is required to obtain the Transaction Privilege Tax license and pay the taxes which will be remitted to the Maumee Indian Tribe. The Wendat Band appealed to the United States Court of Appeals for the Thirteenth Circuit on September 20, 2018.

The United States Court of Appeals for the Thirteenth Circuit reversed the decision of the U.S. District Court, holding that the "Topanga Cession is located in Indian Country on the Wendat Reservation." *Wendat Band of Huron Indians v. Maumee Indian Nation*, 933 F.3d 1088 (13th Cir. 2020). Although the Maumee Allotment Act of 1908, P.L. 60-8107 is ambiguous, the clear intention of Congress in the Treaty of the Wendat of 1859 was to abrogate the right of Maumee Nation to the Topanga Cession. With the Topanga Cession being Indian Country of the Wendat Band reservation, the State of New Dakota lacks the right to tax the Tribe due to infringement and preemption. The Maumee Indian Nation then filed a Writ of Certiorari which was accepted by the Supreme Court of the United States.

## B. *STATEMENT OF THE FACTS*

The Wendat Band of Huron (Wendat Band) is a federally recognized Indian tribe that consists of 1500 to 2000 tribal members that reside in the State of New Dakota. The Wendat Band were promised a reserved land that would overlap the lands of the Maumee Nation. The Maumee Nation is another federally recognized tribe that lives next to the Wendat Band and consists of 1500 to 2000 tribal members. Both Tribes are culturally distinct and have been living on their ancestral lands before the establishment of New Dakota.

The Maumee Nation has a treaty, Treaty of Wauseon, with the United States that was ratified by Congress in 1802, establishing their reservation lands to the west of the Wapakoneta River. The Wendat Band also entered a treaty, Treaty with the Wendat of 1859 (Wendat Treaty), with the United States in which reserves land east of the Wapakoneta River. The Wapakoneta River had moved 3 miles west around the 1830s. Because of the move of the river, it opened a land that has been in dispute and called the "Topanga

Cession". Within the Topanga Cession is the Door Prairie County. Both tribes have maintained exclusive rights to the Topanga Cession since 1937 in which they cite their boundaries given within their treaties. The Door Prairie County consists primarily of non-Indian residents that make up about 80% of the population. The remaining population are Indian residents that solely reside in the Topanga Cession.

Following the history of treaties, both Indian tribes were subject to Allotment Acts that were enacted by Congress from 1887 to the early 1900s. The Wendat Allotment Act was passed on January 14, 1892. Within the Allotment Act included the selling of land to non-Indians and having the land surveyed. The Maumee Allotment Act was enacted on May 29, 1908 which diminished the Maumee reservation further after the abrogation of their lands from the Wendat Treaty. Both Indian Tribes were paid a large sum of money after the enactment of Allotment Acts.

New Dakota has established a state tax on commercial businesses, Transaction Privilege Tax (TPT). TPT is a tax that is levied on gross income of a business and the taxes are paid to the state of New Dakota. The statute provides that half of the 3% the taxes (1.5%) collected from all businesses (not located on reservation lands) located in Door Prairie County and paid to the Maumee Nation. This sum of money is paid for the valuable minerals that were given up by the Maumee Nation.

December 7, 2013 the Wendat Band has bought 1400 acres of land in fee from non-Indian owners. The Wendat Band bought the land in pursuit of commercial development which would include public housing units, a care facility for elders, a tribal cultural center, a tribal museum, and a shopping complex. The shopping complex is owned by Wendat

Commercial Development Corporation (WCDC) which is owned wholly by the Wendat Band. The commercial development, if constructed, would create several economic development centers ranging from grocery stores to café's that serve authentic Wendat cuisine. The tribe plans to use the project to create 350 jobs and $80 million gross sales which they will use to fund multiple tribal projects.

Accordingly, on November 4, 2015 representatives from the Maumee Nation confronted the Wendat Band about the construction that occurred on the Topanga Cession. The Maumee Nation contends that the Topanga Cession is still their land because it was never diminished. The Wendat Band replied that the Topanga Cession was given to them with the Treaty of 1859. The Wendat Band also replied that since the land has been under their authority, they are preempted from state taxes from the TPT because it infringes on their inherent sovereignty. Following the ongoing debate between both the Maumee Nation and Wendat Band, the Maumee Nation filed suit on November 18, 2015.

## SUMMARY OF ARGUMENT

First, we are here to determine if the Treaty with the Wendat abrogated the Treaty of Wauseon and/or did the Maumee Allotment Act of 1908, P.L. 60-8107 (May 29, 1908) diminish the Maumee Reservation? The date of the Wendat Treaty was several years after the Treaty of Wauseon and after the river moved, shows Congress' clear intent that Congress unilaterally diminished the Maumee Reservation as the river continued to be used as the boundary. If the river was not used and actual land coordinates were used it would have been clear that the land was not diminished but since the river was used even after knowing it moved the boundary clearly abrogated the Maumee Reservation. If it is not found that the Treaty of Wauseon was abrogated by the Treaty of Wendat, then it should be found that the

Maumee Allotment Act of 1908 diminished the Reservation based on clear intent of Congress and it being expressly written in the Act. Maumee reservation was diminished both in the Allotment Act and in the Treaty.

Second, it needs to be decided whether the Wendat Allotment Act, P.L. 52-8222 (Jan. 14, 1892) also diminished the Wendat Reservation or is the Topanga Cession outside of Indian Country. The Wendat Allotment Act does not have clear intent from Congress to diminish the Wendat Reservation located in the Topanga Cession. The surrounding circumstances of the allotment act does not support any intent of Congress diminishing the Wendat reservation. Further, the post history of the allotment acts does not support any diminishment claims brought by the Maumee Nation.

Third, it needs to be decided that assuming the Topanga Cession is still in Indian country, whether 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? It should be found that both the doctrine of preemption and infringement prevents the State of New Dakota from collecting the Transaction Privilege Tax against the Wendat Commercial Development Corporation. The Topanga Cession should be determined to be Indian Country as defined by 18 U.S.C § 1151. Even if fee land it is still Indian Country per §1151 to include "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent…." *Seymour v. Superintendent of Washington Penitentiary*. 368 U.S. 351, 357-58 (1962).

## ARGUMENT

### I. Congress did intend to diminish Maumee Reservation but did not diminish Wendat Reservation.

#### *A. The Treaty with the Wendat likely abrogated the Treaty of Wauseon and the Maumee Allotment Act of 1908 diminished the Maumee Reservation.*

Clear Congressional intent is needed for any Treaty to be abrogated or for any Allotment Act to diminish a Tribe's Reservation. *Solem v. Bartlett*, 465 U.S. 463, 468 (1984). *Solem v. Bartlett*, explains that it is rarely detailed in any Acts whether the opened lands were retained for reservation status or were divested of all Indian interests. *Id*. Historically, Congress may not have expressly written much of their intent into an Act as they knew their goal was for Tribes and its members to assimilate into mainstream society and reservations to disappear and be gone away with.

> Consistent with prevailing wisdom, Members of Congress voting on the surplus land Acts believed to a man that within a short time – within a general at most – the Indian tribes would enter traditional American society and the reservation system would cease to exist. Given this expectation, Congress naturally failed to be meticulous in clarifying whether a particular piece of legislation formally sliced a certain parcel of land off one reservation. *Id.*

Therefore, clear intent of Congress is necessary if the statute is not expressly written.

First, for treaty abrogation to be determined, clear intent of Congress is required. *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). As stated in *United States v. Wheeler*, Tribes are sovereigns and although some rights have been divested, "Indian Tribes have not given up their full sovereignty." "Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statutes, or by implication as a necessary result of their dependent status." *United States v. Wheeler*, 435 U.S. 313, 323 (1978). Establishing that clear intent and for the rescission to be expressly written in a treaty or statute is necessary to determine abrogation of Treaty rights.

Next, to establish a reservation is diminished, clear intent is still necessary. There are examples of reservations that have not been diminished. In *Mattz v. Arnett*, the Yurok Nation lived on the Klamath River Reservation, it was found to not be diminished due to losing its identity and to settlement caused by the Allotment Act. *Mattz v. Arnett*, 412 U.S. 481, 484 (1973). *Mattz*, a Yurok tribal member, had his gillnets seized by the California Game Warden where he believed he was fishing on the Klamath River Reservation. *Id.* However, the Department of Fish and Game (Arnett) argued that the Reservation was diminished and where the gillnets were confiscated is not Indian Country due to its lost identity. *Id.* at 484-85. Like most Tribes, the Yurok lived around where their reservation was placed. *Id.* at 487. This case also shows that Congress was aware what was necessary to diminish or discontinue a reservation as other California reservations were discontinued but no action was taken regarding the Klamath River Reservation where the Yurok lived. *Id.* at 490.

The status of the reservation in *Mattz v. Arnett* turns on the 1892 Act of Congress, which opened the reservation for settlement. *Id.* at 485. It also relies on the history of the reservation and reference to the Yurok since claims of the lack of identity are attempting to be established. *Id.* The record keeping is poor but in 1852 a rough census by a trader estimated about 2,500 tribal members living on the Klamath River Reservation. *Id.* at 488. Then a flood happened, and it dwindled the population to 900 in 1895 and 668 in 1910. *Id.* The Act of April 1864, 13 Stat 39, allowed several actions regarding reservations in California, however, the Klamath River Reservation was not impacted. *Id.* at 490. Then an Executive Order on October 16, 1891 basically merged the Klamath River Reservation with the Hoopa Valley Reservation, "The Klamath River Valley Reservation, or what had been the reservation, thus was made part of the Hoopa Valley Reservation as extended." *Id.* at 493.

There were to only be four reservations in California due to the 1864 Act, which is the likely reason the reservations were "expanded". The 1892 Act was entitled, "An act to provide for the disposition and sale of lands known as the Klamath River Indian Reservation" and provided for the sale of the land and "that the proceeds arising from the sale of said lands shall constitute a fund to be used under the direction of the Secretary of Interior for the maintenance and education of the Indians now residing on said lands and their children." *Id.* at 494-95.

There were several Acts that did not pass that would have abolished the Klamath River Reservation, the 1892 Act specified for '"removal, maintenance, and education"' of the resident Indians." *Id.* at 503. This bill did not pass, and it was changed to provide for allotment and did not allow removal of the Indians. *Id.* Only maintenance and education were allowed, not the removal. *Id.* Although the reservations may intersect, it appears that both reservations are recognized, and the Klamath River Reservation was not terminated. *Id.* at 505. It was also found that the lack of tribal members on the land did not mean the identity changed nor should this mean it is no longer reservation land belonging to the Yurok Tribe. *Id*.

*Seymour v. Superintendent of Washington Penitentiary* is another example of a reservation that was not diminished. The Colville reservation was diminished by an Act in 1892 by Congress, as its language in the Act states the North half of the reservation should be "vacated and restored to the public domain" and the South half was "still reserved by the Government for their use and occupancy." *Seymour,* 368 U.S. 351, 354 (1962). It was found that this language expressly diminished the Colville reservation. *Id.* at 355. However, the 1906 Act did not diminish the Colville Reservation. "Congress has explicitly recognized the

continued existence as a federal Indian reservation of this South Half or diminished Colville Reservation." Thus, restoring that part of the reservation to the Colville Tribe. *Id.* at 356. The language of the 1906 Act the proceeds from the sale of land be, "deposited in the Treasury of the United States to the credit of the Colville and confederated tribes of Indians…" *Id.* at 355. This Act allowed for settlement, "it seems clear that the purpose of the 1906 Act was neither to destroy the existence of the diminished Colville Indian Reservation not to lessen federal responsibility for and jurisdiction over the Indians having tribal rights on that reservation." *Id.* at 356. Even if fee land it is still Indian Country per §1151 to include "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent…." *Id.* at 357-358.

More importantly there are examples of reservations that were diminished due to clear intent of Congress. *Decoteau v. District County Court for Tenth Judicial Dist.*, and *Rosebud Sioux Tribe v. Kneip*, are examples of reservations that have been diminished. The language in the Act and the legislative history are clear in *Decoteau,* as both repeatedly said that the land will return to public domain. "That the lands ceded in the other agreements were returned to the public domain, stripped of reservation status, can hardly be questioned, and every party here acknowledges as much. The sponsors of the legislation stated repeatedly that the ratified agreements would return the ceded lands to the 'public domain.'" *Decoteau v. District Country Court for Tenth Judicial Dist.*, 420 U.S. 425, 446 (1975). This case varies from *Mattz* and *Seymour*, not only due to diminishment being found in *Decoteau* but largely due to the language used in the Acts and the clear intent shown in the Congressional history. *Id.* at 447-48. Another aspect is the matter of *Decoteau* the agreement was bilateral. "It is not a unilateral action by Congress but the ratification of a previously negotiated agreement, to

which a tribal majority consented." *Id.* at 448. In this matter it is not merely allowing only for non-Indian settlement as in *Mattz* but is a clear intent to sell the land and terminate that portion of the reservation. "[I]t also appropriates and vests in the tribe a sum certain – $2.50 per acre – in payment for the express cession and relinquishment of "all" of the tribe's "claim, right, title, and interest" in the unallotted lands." *Id.* at 448.

*Decoteau* history shows bilateral interests of the ceding of the reservation land to the United States Government for the benefit of the Tribe and for future settlement. "If the Government will do this, it will benefit both the Indians and the whites [and illustrates by holding up half a dozen keys [in a] perpendicular position, separately], we all stand this way [and then, pressing them against each other], we will be as one key. When the reservation is open, we meet as one body. We be as one." Id. at 433-34. The goals of Allotment were to get rid of reservations but also to assimilate Indians into mainstream white culture. This was the intent shown in this matter. The payment of the sale of land would also help the Indians with education and civilization of its members. *Id.* at 441. On December 3, 1889, Tribal Spokesman Gabriel Renville stated, "This little reservation is ours, and all we have left. There is nothing in our treaty that says that we must sell. It was given us as a permanent home, but now we have decided to sell. . . ." *Id.* at 436, footnote 15.

*Rosebud Sioux Tribe v. Kneip* is another example of a Tribe having multiple Acts and it was found to diminish their reservation. The Rosebud Sioux Tribe was established and covered five counties in South Dakota. *Rosebud Sioux Tribe v. Kneip,* 430 U.S. 584, 586 (1977). After three Acts (1904 Act, 1907 Act, and the 1910 Act) the reservation leaves only one county unaffected by settlement. *Id.* The 1889 Treaty of Rosebud did state that any amendments would be approved by three-fourths of the adult male tribal membership. *Id.* at

587. The Tribe argues that the Acts should still be bilateral and not unilateral, however, Congress can act unilaterally, regardless if the three-fourths consent of the tribe was required by the Treaty. *Id.* This was made clear by the decision in *Lone Wolf v. Hitchcock*, "which held that Congress possessed the authority to abrogate unilaterally the provisions of an Indian treaty." *Id.* at 588. The 1904 Act ceded land from a previous agreement that was not ratified but had three-fourths tribal membership approval but failed Congress due to the type of payment. The 1903 Act did not meet three-fourths tribal membership, but the Tribe was told that Congress can act unilaterally, and they did do this since this Act was nearly identical to the 1901 Agreement but in payment. *Id.* at 594-95.

> The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power to abrogate existed in Congress…. … "… In any event, as Congress possessed full power in the matter, the judiciary cannot question or inquire into the motives which prompted the enactment of this legislation. *Id.* at 594 (Quoting Lone Wolf v. Hitchcock).

The Tribe argues that "cession" requires bilateral consent, but the meaning is still clear, that the intent was to follow the 1901 Agreement and approve it by the 1904 Act and diminish the reservation. Further, in looking at the identity of the impacted county of the 1904 Act, it is 90% non-Indian in both population and land use, which is clear intent that the reservation was diminished. *Id.* at 605.

Further, the intent in the Acts of 1907 and 1910 are like the 1904 Act, to further diminish the Rosebud Sioux Reservation. The 1907 Act states, "do hereby cede, grant, and relinquish to the United States all claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation [in Tripp and Lyman Counties], except such portions thereof as

have been, or may hereafter be, allotted to Indians." *Id.* at 607. The Act of 1910 uses very similar language but is regarding the current day Mellette County. *Id.* at 613. To further support the diminishment of this reservation, a section is added that if a member of the Tribe has an allotment in the territory that is in the impacted counties that they may choose a new allotment. *Id.* The Court held that the Rosebud Sioux Reservation was diminished by each Act and the Treaty of 1889 boundaries were reduced. *Id.*

In *Hagen v. Utah* the fate of the Uintah Indian Reservation is in question as being diminished by Congress when it was opened to non-Indian settlers. *Hagen v. Utah,* 510 U.S. 399, 401 (1994). *Hagen v. Utah,* solidifies the three factors in which diminishment of a reservation can be found: (1) expressed statutory language, (2) historical context surrounding the passage of the surplus land Acts, and (3) who moved onto the land. *Id.* at 411. Additionally, a land can be diminished without payment of a sum certain. *Id.* at 412. "We thus decline to abandon our traditional approach to diminishment cases, which requires us to examine all the circumstances surrounding the opening of a reservation." Thus, in the matter of the Maumee and Wendat Band of Huron Indians, all circumstances should be looked at.

"There is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms. The only role such materials can properly play is to help "clear up . . . not create" ambiguity about a statute's original meaning." *McGirt v. Oklahoma,* 140 S.Ct. 2452, 2469 (2020). (Quoting *Milner v. Department of Navy*, 562 U. S. 562, 574 (2011). First, the dates of the Treaty of Wendat and Maumee Treaty of Wauseon are important when looking at the intent of Congress in abrogating the Treaty of Wauseon. The Treaty of Wauseon established the Maumee Reservation, it was signed on October 4, 1801 and ratified by Congress on February 8, 1802.

Treaty of Wauseon, October 4, 1801, 7 Stat. 1404. The Maumee Allotment Act was approved on May 29, 1808 that allowed for sale and settlement of the Eastern part of the Maumee Reservation. Maumee Allotment Act of 1908, P.L. 60-8107 (May 29, 1908). The Wapakoneta River was used as the Reservation border in the Treaty, Article III, "The boundary line between the United States and Maumee Nation, shall be the western bank of the river Wapakoneta, between Fort Crosby to the North and the Oyate Territory to the South, and run westward from there to the Sylvania River." Treaty of Wauseon, October 4, 1801, 7 Stat. 1404. However, the Wapakoneta River moved about three miles west in the 1830's. Several years after the river moved, the Treaty of Wendat was approved on March 26, 1859. This Treaty states, "The Chiefs, Headman and Warriors, aforesaid, agree to cede to the United States their title and interest to the lands in the New Dakota Territory, excepting those lands East of the Wapakoneta River;". Treaty with the Wendat, March 26, 1859, 35 Stat. 7749. This Treaty establishes the Wendat reservation and while doing so gives them the area now known as the Topanga Cession.

It needs to be determined whether the Treaty of Wauseon was abrogated when the Treaty of Wendat was approved. Congress clearly approved both Treaties with each Tribe and clearly used the Wapakoneta River as the boundary of each reservation. With the Maumee Reservation set to the West of the River and the Wendat Reservation being set to the East of the River. Although the actual boundary of the Maumee was not revoked by Congress, the land was clearly taken away when the new Treaty was made with the Wendat. The land was surveyed, and it was known that in the 1830's that the Wapakoneta River moved, using this as a boundary clearly gave the Topanga Cession to the Wendat Band. Also, as in the case of the *RoseBud Sioux Tribe*, Congress can act unilaterally to change a Treaty.

*Rosebud*, 430 U.S. at 594-595. The Maumee did not have to be consulted to change the Reservation boundary. The intent of Congress to abrogate the Treaty of Wauseon is clear when years later the Treaty of Wendat is approved to expand their reservation boundary into what is known as the Topanga Cession today.

This is different from the matter in *Mattz*, as that merged the Klamath River Reservation and the Hoopa Valley Reservation. In *Mattz*, there was a River used as a boundary, but that River did not move as the Wapakoneta River did in the 1830s. *Mattz*, 412 U.S. at 484. Also, in California Congress only allowed for four reservations, nothing in New Dakota history has restricted the number of reservations that can be established. Even if it may be found that the Reservation of the Maumee and the Reservation of the Wendat may have merged and that they take up the same land, the Maumee Allotment Act will find that the reservation of the Maumee was diminished.

If the Treaty of Wendat did not abrogate the Treaty of Wauseon, the Maumee Allotment Act of 1908 diminished the Maumee Reservation. "when Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress." *Seymour v. Superintendent of Washington State Penitentiary*, 368 U.S. 351, 359 (1962) (quoting *United States v. Celestine*, 215 U.S. 278, 285 (1909)). The Allotment Era has impacted several Tribal reservations across the United States and continues to be brought forth as an issue for the Courts to determine if Congress has diminished a Tribes reservation. "For years, States have sought to suggest that allotments automatically ended reservations, and for years courts have rejected the argument." *McGirt*, 140 S. Ct. at 2464. Again, Congress must expressly and with clear intent, disestablish a reservation.

The Maumee Allotment Act, Appendix 1, clearly shows that the Maumee Reservation was diminished. Section 1 states, "Unclaimed lands in the western three-quarters of the reservation shall continue to be reserved to the Maumee. The Indians have agreed to consider the entire eastern quarter surplus and to cede their interest in the surplus lands to the United States where it may be returned to public domain by way of this act." Maumee Allotment Act of 1908, P.L. 60-8107, Section 1 (May 29, 1908). This is like the case of *Decoteau*, as that also stated the land would be ceded, sold, and returned to public domain. It was found, as it should be here, that the reservation was diminished.

The congressional intent is also shown in the legislative history of the Maumee Allotment Act. On Congressional record, "the purpose of this bill is to provide for the survey of the lands of the Maumee Indian Reservation, situated in the State of New Dakota, and for the allotment of the lands in severalty to the Indians and for the sale and disposal of surplus lands after allotment." *42 Cong. Rec.*, S2418, 2345 (daily ed. May 29, 1908) (statement of Sen. Pray). There was no discussion on if the lands would continue to belong to the Indians, although the question was asked by Mr. Gaines of Tennessee. *Id.* However, this should not be seen as ambiguous when the language stated in the purpose was "disposal of surplus lands after allotment." *Id.* (statement of Sen. Pray). Further, in support of diminishment regarding Allotment Acts, "In pursuance of that policy we have opened a great many reservations in the United States, and I hope we will follow out this policy and that in a few years there will not be a single Indian reservation left in the borders of this whole country. [Applause.]" *Id.* (statement of Mr. Stephens). This was also a bilateral agreement, as the Secretary of Interior did meet with the Maumee a year before this Act was passed, believing that it would benefit both the Indians and the U.S. citizens wanting to settle in New Dakota territory. *Id.*

Therefore, the Maumee Allotment Act Congressional record also reflects the intent of Congress.

The Treaty of the Wendat likely abrogated the Wauseon, if not, the Maumee Allotment Act of 1908 diminished the Maumee Reservation. Thus, the Topanga Cession does not belong to the Maumee.

### *B. The lands of the Wendat Band of Huron Indians was not diminished by the Wendat Allotment Act of 1892.*

To determine if a reservation has been diminished, we look to the three-step analysis given under *Solem v. Bartlett*. First, reservation lands are diminished when Congress has the clear intent to do so under an Act. *Solem v. Bartlett*, 465 U.S. 463, (1984). Secondly, If the language of the Act is ambiguous the surrounding circumstances are analyzed to determine the ambiguity of the diminishment. *Id.* Even in the absence of Congressional intent the surrounding circumstances may support the conclusion that a reservation has been diminished. *Id.* Thirdly, the first two steps of the analysis are supported by the post enactment history of the clear language and surrounding circumstances. *Id.*

First, diminishment of reservation lands by Congress must be clear and intentional. *Id*. Words such as 'sell, cede, relinquish or convey" are construed by the Court to mean diminishment by Congress. *Id.* at 470. "When such language is buttressed by an unconditional commitment… to compensate the Indian tribe, there is almost an insurmountable presumption [of diminishment]." *Id*. The Cheyenne River Sioux Tribe wanted to establish that their reservation was not diminished because Congress had no intent in doing so. The Congressional Act had only mentioned that the Secretary can dispose of the lands or sell them, acting simply as the tribe's agent. "the Cheyenne River Act simply

authorizes the Secretary to "sell and dispose" of certain lands." *Id*. at 473. Further, the Court explains that the Act did not have any mention of possible diminishment of the reservation. The Court also found that the history of Acts passed did mention diminishment but concluded that the mentioning of "diminishment" alone does not signify actual ceding, selling or conveying land. *Id*. at 478.

In a most recent case, *McGirt v. Oklahoma*, the Court found the Creek reservation was not diminished because the Allotment Acts did not have any clear language of intent. The state of Oklahoma argued that the Creek reservation was diminished because the allotment acts clearly stated that the land was to be open for settlement. "Oklahoma next points to various statements during the allotment era which, it says, show that even the Creek understood their reservation was under threat." *McGirt,* 140 S.Ct. at 2472. The Court did recognize the ongoing history of allotment acts and the treaty between the U.S. and Creek Nation. With the support of the treaty and the post history of the allotment acts, they concluded that the Creek reservation was not diminished. *Id*. at 2474.

*Rosebud v. Kneip* shows the intent of Congress was to diminish reservation lands. The use of "cede, surrender, grant, and convey" signifies a diminishment of the reservation. *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 597 (1977). The Court found that although "public domain" could not stand alone, they would look at Congressional Acts that signified diminishment. The Court found that the Allotment Acts passed did show clear intent of diminishment. The surrounding circumstances with the following history of Acts weigh heavily when applying this test. Congressional intent is analyzed thoroughly involving the Sisseton and Wahpeton bands of Dakota in *Decoteau v. District City Court for Tenth Judicial District*. In *Decoteau*, the Court had found that the Sisseton-Wahpeton reservation was

diminished by Congress because of both Congressional intent and surrounding circumstances. *DeCoteau v. Dist. Cty. Court for Tenth Judicial Dist.*, 420 U.S. 425, 444 (1975). The Act of 1891 states "The Sisseton and Wahpeton bands of Dakota or Sioux Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted land". *Id*. at 445. The Court found that "cede, sell, relinquish, and convey", to be sufficient to conclude that the reservation was diminished.

The Court mentions that the usage of public domain to be construed as diminishment cannot simply conclude that the reservation was diminished. *Id.* Along with public domain, simply opening lands to settlement does not mean diminishment. It must not only show intent and clarity in the Congressional Act but must be emphasized or supported by the surrounding circumstances. The usage of "public domain" has been construed to mean diminishment if it is put into the statutory language, but merely mentioning it in only a few instances does not mean diminishment of a reservation. *Id.* at 445 The use of "public domain" in statutory language must be followed by a clear intent to diminish the reservation. *Id*. Furthermore, if there is clear diminishment of a reservation the Court must look to case precedent such as *Hagen v. Utah*. In *Hagen,* the Court looked at the Congressional debate that mentions that after *Lone Wolf v. Hitchcock,* Congress had the ability to open Indian reservations completely diminishing interests in the reservation. *Hagen v. Utah*, 510 U.S. 399, 404 (1994). Further, *Hagen* explains that the operative language of "public domain" must be followed by legislative intent through congressional hearings or legislative history after the Act itself. *Id.* This case narrows the congressional intent of public domain and the usage of it within an Act. In a more recent case, *Nebraska v. Parker*, The Omaha Tribe resided in a portion of Nebraska, and was absent from the area for more than 120 years, but the Court still ruled in

favor of the Omaha tribe. *Nebraska v. Parker*, 136 S. Ct. 1072, 1081–82 (2016). The Court emphasizes that the loss of Indian identity does play an evidentiary role, but the Court has never solely relied on it for the third consideration for diminishment. *Id.* "This subsequent demographic history cannot overcome our conclusion that Congress did not intend to diminish the reservation in 1882." *Id.*

The Wendat Band Huron Indians did not cede their lands nor was their reservation diminished by the Wendat Allotment Act of 1892 (Wendat Act). When the Wendat Act was passed by Congress it only opened lands as surplus opened to settlement but did not diminish any interest of the reservation lands. The usage of surplus lands open for settlement does not necessarily diminish as explained in *Mattz*, land that is surplus and open to settlement does not necessarily imply diminishment. *Mattz, v. Arnett*, 412 U.S. 481, (1973). The Wendat Act like the Act in *Mattz,* shows that the land was to be held in use or benefit of the tribe. The Secretary merely was the agent to the tribe and their allotted lands to the settlers. The Wendat Act states the following "all lands selected within one year of the survey's completion shall be declared surplus lands and open to settlement. The eastern half to be reserved by the Wendat Band in the1859 Treaty shall continue to be held in trust by the United States for the use and benefit of the tribe." Wendat Allotment Act, P.L. 52-8222, Sec. 1 (Jan. 14, 1892). Clearly Congress did not use any language signifying that the Wendat ceded or totally conveyed their lands.

The opening of lands to settlement also does not mean that the Wendat Allotment Act diminished any of the reservation. The Wendat Act states "That all money accruing from the disposal of said lands…" *Id*. at sec. 3. The operative language is "disposal", opposing counsel would argue that the operative language shows intent of diminishment. Like *Solem,*

this alone cannot be stretched to show diminishment. *Solem*, 465 U.S. at 470. The disposal coupled with selling of land in the Congressional debate would support the claims by opposing counsel, however, the history of the allotment acts after the Wendat Allotment Act outweigh the argument.

Like *McGirt*, the Wendat reservation was established by the Treaty of Wauseon and the lands were to be set aside for the Wendat Band. Treaty with the Wendat, March 26, 1859, 35 Stat. 7749. In *McGirt*, the Court explains that the Creek Nation had set a government and created a booming economy with its people. *McGirt*, 140 S.Ct. at 2467. The Wendat Tribe has also met the goals of Congress, becoming a well-established government with a growing economy for its people. Congress mentions that their goal is to "civilize" the tribe. *23 Cong. Rec.*, 1777 (daily ed. Jan. 14, 1892) (statement of Sen. Ullrich). There is no allotment act after the 1892 Wendat Allotment Act, the closest acts that were passed were that of the Maumee tribe. Clearly, the Maumee tribe's allotment acts were passed one after another. Therefore, the Maumee reservation was diminished, and Congress had recognized that the Wendat reservation was to be reserved for the benefit of the tribe and held in trust with the U.S.

If a term does not have clear intent, the surrounding circumstances are analyzed to determine if there was diminishment. *Solem*, 465 U.S. at 478. The surrounding circumstances are taken from the Congressional floor debate about the Wendat Allotment Act. While examining the debate, there is only one instance that they mention surplus lands, public domain and the reduction of reservations. Senator Ullrich uses "public domain", but it does not indicate in any form that the land was conveyed, sold, or ceded from the Wendat tribe. *23 Cong. Rec.*, 1777. The public domain does not necessarily mean diminished as explained in

*Solem*, this alone cannot be construed to explain Congress's intent at the time. Different from the usage in *Hagen*, where public domain was utilized within the Act itself. *Hagen*, 510 U.S. at 404. The Wendat Allotment Act does not mention public domain, it only mentions that the land not selected shall be declared as "surplus". Wendat Allotment Act, P.L. 52-8222. Following Solem, Justice Marshall points out that if the words are scarcely used, they must not be construed to show the totality of diminishment. *Solem*, 465 U.S. at 475. The Congressional debate only mentions sales and public domain uses, but the Allotment Act itself does not show any indication of "public domain".

The argument of the low population of the Wendat Band in the Topanga Cession should not be an argument for the loss of Indian identity of the land or its people. The Court has two opposing views of Indian identity equaling reservation diminishment. In *Rosebud,* the court finds that the small population of Indians plays a factor into showing diminishment of an Indian reservation. *Rosebud*, 430 U.S. at 605. However, in a more recent case, *Nebraska v. Parker*, the Court emphasizes that the loss of Indian Identity does play an evidentiary role, but the Court has never solely relied on it for the third consideration for diminishment. "This subsequent demographic history cannot overcome our conclusion that Congress did not intend to diminish the reservation in 1882." *Nebraska v. Parker,* 136 S. Ct. 1072, 1081–82 (2016). Like the Omaha tribe in Parker, the Wendat Tribe has dwindled in the Topanga Cession. This does not show any diminishment because the tribe has had an influence in the Topanga Cession.

The language in the Wendat Allotment Act does not show Congress intended to diminish the Wendat reservation.

## II. The State of New Dakota cannot collect assessed taxes on the Wendat Tribe.

*A. The Wendat Band of Huron is preempted from the New Dakota TPT.*

Indian tribes are “domestic dependent nations" that exercise inherent sovereign authority over their members and territories. *Cherokee Nation v. State of Georgia, 30 U.S. 1, 17 (1831).* State suits against Indian tribes are barred by tribal immunity unless there is a clear waiver by the tribe or congressional abrogation. *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58 (1978). A commercial business that is owned by the tribe is exempt from a state law when it is on or off reservation lands. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). Federal law preempts state regulation of commercial activity conducted by a non-Indian entity on a reservation if the state disrupts tribal sovereignty. *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (1995). A state cannot sue a tribal entity to collect assessed state taxes. *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 1010 (1990). A corporation run by the tribe outside of the reservation is exempt from suits brought against them by the state unless an Act of Congress says otherwise. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998).

Federal law preempts state regulation of commercial activity conducted by a non-Indian entity on a reservation if the state disrupts tribal sovereignty. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). The White Mountain Tribe harvested timber with tribal members and hired Pinetop Logging Company to fell and transport timber that was harvested by the Tribe. *Id*. at 138. The state of Arizona assessed a carrier license tax and an excise fuel tax against Pinetop. The issue was whether the state could regulate and assess a tax when it is preempted by Federal Regulations. *Id* at 139. The Court disagreed and

concluded that Federal regulations and law preempt state laws or regulations. The Court further explained that a state regulation cannot infringe or interfere with tribal sovereignty or business. The Court applied a balancing test weighing the interests of the Federal Government, State, and tribes. "A State asserts authority over the conduct of non-Indians engaging in activity on the reservation." *Id.* at 144. The Court concluded that if the state regulation interfered with the tribe and federal scheme that it was illegal. Therefore, the Arizona state taxes interfered with the Tribe. *Id*.

In *Oklahoma Tax Commission v. Chickasaw Nation*, the Court concluded that a state could not tax fuel sold on reservation land because the interests of the tribe greatly outweigh the state interests. *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995). The case involved the Chickasaw Nation and the Oklahoma state tax that was imposed on the fuel that was sold on reservation land. *Id*. at 451. The Chickasaw Nation sued the state of Oklahoma because of the excessive taxes on tribal members. *Id.* The Court applied the balancing test given in *White Mountain Apache*. The Court weighed the interests of Federal, state and tribes. The Court further explained that there must be an Act of Congress to allow states to tax reservations. *Id.* They found that there was no Act that allowed such a tax on the Chickasaw reservation. Therefore, the state tax on fuel was illegal because it occurred within the reservation.

In *Potawatomi*, the Court ruled that the state could not sue the tribe for assessed taxes. *Potawatomi*, 498 U.S. at 510. The Potawatomi Tribe had sold cigarettes and the state of Oklahoma had asked the tribe to pay $2.7M in state taxes. *Id*. at 507. The state sued the Tribe, in which the Tribe countersued for the $2.7M arguing that the state did not have the ability to sue the tribe because of their sovereign immunity. *Id.* at 507-508. The Court

promoting Indian self-determination ruled in favor of the tribe stating that the taxes of the state would burden the tribe and its revenue. *Id.* at 510. Following their ruling in *Potawatomi*, the Court expanded the boundaries of tribal immunity in *Kiowa Tribe of Oklahoma v. Manufacturing Technology, Inc.*

In *Kiowa Tribe of Oklahoma v. Manufacturing Technology, Inc.*, the Court ruled that an Indian tribe cannot be subject to suits brought by the state for a commercial transaction that occurs off reservation. *Kiowa,* 523 U.S. 751. The Kiowa Tribe had met with Clinton-Sherman Aviation, Inc. to purchase stock for the Manufacturing Technology, Inc. (MTI). *Id* at. 752. MTI had sued stating that the tribe had signed the agreement off the reservation when the note said it was to be signed on the reservation. *Id*. MTI argued that the Tribe could be sued because the transaction was off reservation therefore under the jurisdiction of the state of Oklahoma. The tribe moved to dismiss arguing that they still have tribal immunity. The Court agreed stating that the tribe could not be sued while conducting off reservation commercial transactions. *Id.* at 759. Tribal immunity doctrine applies to commercial transactions and businesses conducted by Indians off reservation land. *Michigan v. Bay Mills Indian Community,* 572 U.S. 782, (2014).

In *Michigan v. Bay Mills Indian Community,* the state of Michigan tried to tax the commercial business of the Bay Mills casino that was on fee land held in trust by the tribe and state. *Bay Mills,* 572 U.S. at 786. The land that was bought by the Tribe and put under Indian jurisdiction, Michigan disagreed and sued the Tribe. Neither the state nor tribe waived their sovereign immunity. *Id.* The Court concluded that since the tribe did not waive its sovereign immunity that the state did not have the ability to tax the commercial business. The sovereign immunity doctrine does not allow any of the states to sue the tribe, unless the tribe

waives it, or an Act of Congress abrogates the tribal immunity. *Id.* at 797. The Court follows the rule from the *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, reiterating that it is within Congress to determine whether to abrogate a tribe's immunity. *Id.* The Court also concluded that the non-Indian land bought for the casino was not subject to suits brought by the state. Therefore, the state cannot pass laws that infringe upon tribal immunity.

The interests of self-determination and tribal interests weigh heavily in favor of the Wendat Band. When applying the test given in *White Mountain Apache*, we must look at the interests of the Federal, state and tribes. *White Mountain Apache,* 448 U.S. 136. The Wendat Band has started building a commercial business within its reservation. The state TPT would impose a 3% tax on the business of the Wendat Band. This would infringe upon the self-determination of the Wendat Band because of the excessive taxes. Like *White Mountain Apache,* the Court found that the state tax on the lumber company would infringe upon the inherent sovereignty that the Apache Tribe has. *Id*. at 138. Further, the Wendat Band would lose a great some of revenue for their people if the tax is imposed on the reservation. Since, the Wendat Band has not waived its sovereign immunity to be taxed or Congress has not passed Act saying otherwise, the state of New Dakota cannot impose a tax. Following case precedent in *Chickasaw Nation*, the Court should rule in favor of the Wendat Band preemption, because they have not shown intent to waive its sovereign immunity nor consented to the taxes of New Dakota. C*hickasaw Nation*, 515 U.S. 450.

The state taxes on the non-Indian fee land that the Wendat Band of Huron interfere and are not applicable to the commercial business of the Wendat Band. The Wendat, like other tribes, have inherent sovereignty that was not abrogated and therefore has tribal immunity to state taxes. When the 1,400-acre parcel of land was purchased it became a part

of the Wendat commercial business. The 1,400-acre parcel is located within the Topanga Cession, land that was never diminished from the Wendat Band. The land is strictly under the tribe, even if the land is owned by non-Indians it is within the boundaries of Indian Country. Like *Potawatomi*, the Wendat cannot be sued for assessed taxes by the state. *Potawatomi*, 498 U.S. at 510. The state of New Dakota would likely bring suit against the Wendat Band to collect assessed state taxes (TPT). As stated in *Potawatomi*, tribal self-determination weighs heavily in this case because of the tribe's interest in its own economy. *Id* at. 510. Further, the Wendat Band argues that they have immunity for commercial transactions that occur on the Wendat reservation. If the Court finds that the Wendat Band reservation was diminished, the transaction between the non-Indian owners was off reservation and therefore New Dakota can bring suit about the non-consensual transaction.

Like *Kiowa*, the transaction is still within the bounds of sovereign immunity because the Tribe did not waive its immunity. *Kiowa*, 523 U.S. 751. Therefore, the state would not have jurisdiction to assess taxes in a suit against the Wendat Band. The sovereign immunity doctrine does not allow any of the states to sue the tribe, unless the tribe waives it, or an Act of Congress abrogates the tribal immunity. *Bay Mills*, 572 U.S. at 797. Congress has not abrogated the sovereign immunity of the Wendat Band, nor has the Wendat Band waived its tribal immunity. Like *Bay Mills*, the business was conducted on fee land that was purchased by the Bay Mills Indian Community. The fee land in our case is owned by non-Indians, but since there was no abrogation of the land by any act of Congress, the fee land would still be within Indian Country. Thus, the balancing test given in *White Mountain Apache* sets precedent in our case, because tribal immunity and economic growth are strong tribal interests.

*B. The New Dakota TPT infringes on the rights of the Wendat Band of Huron Indians.*

Indian Country is defined by 18 U.S.C. § 1151 which defines Indian country as all land within an Indian reservation that is under federal jurisdiction and Indian allotments that have not been extinguished. 18 U.S.C § 1151. Furthermore, "this Court has already rejected the argument that allotments automatically ended reservations." *McGirt*, 140 S.Ct. at 2457. Since the Topanga Cession should be considered Indian Country, "A state may not levy a tax that infringes upon the right of reservation Indians (*Williams v. Lee*, 358 U.S. 217 (1959)) nor may a state impose a tax that is preempted by federal or tribal interests (*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980))." *Wendat Band of Huron Indians v. Maumee Indian Nation*, 933 F.3d 1088 (13th Cir. 2020).

*Williams v. Lee* involves members of the Navajo Nation who owed the owner of the general store located on the reservation money for a bill. *Williams v. Lee*, 217, 218 (1959). Instead of taking the couple to tribal court Lee, a non-Indian, took them to state court to try and recoup the money owed. *Id.* The Williams' claim that the state court lacked jurisdiction over them since they were members of the Navajo Nation. *Id.* The Arizona Supreme Court decided that since Congress did not forbid civil suits by non-Indians on the reservation that they can decide this matter, but the Supreme Court granted certiorari. *Id.* State infringement is not a new theory, it goes back to *Worcester v. Georgia*. "The Cherokee nation . . . is a distinct community, occupying its own territory . . . in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress." *Id.* at 219. Furthermore, "Congress has acted consistently upon the assumption that the states have no power to regulate the affairs of Indians on the reservation." *Id.* When jurisdiction over

Indians by the state has been wanted, Congress has expressly granted the states this power. *Id.* The Navajo tribal court system is an advanced tribal court, it has the ability to "exercise broad criminal and civil jurisdiction which covers suits by outsiders against Indian defendants. No Federal Act has given state courts jurisdiction over such controversies." *Id.* at 222. This power vested in the Navajo Tribal Court is granted by the Treaty of 1868 and shall remain, it is immaterial that the respondent is non-Indian. *Id.* at 223. The State of Arizona has no right to infringe on the power that should remain in the Navajo Tribal Court.

State taxation on Indian Reservations is an infringement on the right of Tribes to govern themselves. As stated in *Williams v. Lee*, the Arizona Courts should be denied the ability to settle the issue and the matter should be dealt with in Tribal Court, "would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves." *Id.* at 223. Furthermore, in *McClanahan v. Arizona State Tax Commission*, "State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply." *McClanahan v. Ariz. State Tax Comm'n*, 411 U.S. 164, 170-71 (1973). (Quoting U.S. Dept. of the Interior, Federal Indian Law 845 (1958) (hereafter Federal Indian Law)." For example, "It follows that Indians and Indian property on an Indian reservation are not subject to State taxation except by virtue of express authority conferred upon the State by act of Congress." *Id.*

In the present case there is not a federal act that will allow the State of New Dakota to infringe on the right of the Wendat Band of Huron Indians. The Tribe has the right to be free to govern themselves on their own reservation. The Transaction Privilege Tax is a State Ordinance of New Dakota. The Wendat should be free of paying this tax since the land in

question is located in the Topanga Cession and this land should be considered Wendat Reservation land. Although the Wendat Treaty does not explicitly state they are free from taxation by the State of New Dakota like the Navajo Treaty states that the Navajo Nation will have broad criminal and civil jurisdiction, as found in *Williams v. Lee*, the right of Tribes to be free from state taxation is long standing due to infringement. "Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." *Id.* at 220. The TPT tax of New Dakota infringes on the inherent sovereignty of the Wendat Band.

If the Topanga Cession is determined to be on the Wendat Reservation, since the Maumee Allotment Act diminished this area of land from the Maumee and the Wendat Allotment did not diminish the Wendat Reservation, the Wendat should be free from state infringement.

Due to the Topanga Cession being on the Wendat Reservation, the land is Indian Country, even if the land is allotted. Therefore, since the Topanga Cession is in Indian Country, the doctrine of Indian preemption and infringement prevents the State of New Dakota from collecting its Transaction Privilege Tax against a Wendat Commercial Development Corporation.

## CONCLUSION

As stated in *Rosebud Sioux Tribe,* "we are guided by well-established legal principles. The underlying premise is that congressional intent will control. *DeCoteau v. District County Court*, supra, at 444, 449; *United States v. Celestine*, 215 U.S. 278, 285 (1909). In determining this intent, we are cautioned to follow "the general rule that '[d]oubtful

expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith." *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 174 (1973), quoting *Carpenter v. Shaw*, 280 U.S. 363, 367 (1930); see also *Mattz v. Arnett*, supra, at 505." What we have in the matter of *Maumee Nation v. The Wendat Band of Huron Indians* is clear congressional intent that should be found in favor of the Wendat Band. The Treaty of the Wendat abrogated the Treaty of Wauseon and the Maumee Allotment Act also diminished the Maumee Reservation. It should be found that the Topanga Cession is Indian Country and Wendat Reservation, therefore the tax should be denied as against preemption and infringement.

Therefore, the judgment of the United States Court of Appeals for the Thirteenth Circuit should be affirmed.

Respectfully Submitted the 4th day of January 2021.

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T1043-Attorneys for Respondent

# Appendix 1: The Allotment Acts

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

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

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

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

shall be divided into the following classes: Division of lands. First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, the mineral land not to be appraised.

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

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

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

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

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

Approved, May 29, 1908.

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

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

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

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

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

Approved, January 14, 1892.

# Appendix 2: The Treaties

## TREATY OF WAUSEON

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

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

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

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

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

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

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

ARTICLE VII.
If any Indian or Indians shall commit a robbery or murder on any citizen of the United States, the tribe to which such offenders may belong, shall be bound to deliver them up at the nearest post, to be punished according to the ordinances of the United States.

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

Pemedeniek, by his x mark
Quieuenontatironons, by his x mark
Ochastequin, by his x mark
Tionondati, by his x mark
Lamatan, by his x mark
Yendat, by his x mark
Ahouandate, by his x mark

Davis Parker
Emerson Vance

Witness
Brenton Tice
U.S. Indian Agent – at Fort Crosby

Signed this October 4, 1801

**Subsequently ratified by Congress without Amendment Monday February 8, 1802.

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

# TREATY WITH THE WENDAT OF 1859

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

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

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

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

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

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

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

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

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

# Appendix 3: Legislative History of the Allotment Acts

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

HOUSE

Thursday January 14, 1892

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

The SPEAKER: The House now turns to the consideration of

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

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

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

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

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

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

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

Most respectfully, JOHN W. NOBLE, Secretary.

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

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

Mr. HARVEY. Unanimously.

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

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

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

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

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

Mr. ULLRICH: The work in the Bureau of Indian Affairs was perhaps never so large as now, by reason of the numerous negotiations which have been proceeding with the tribes for a reduction of the reservations, with the incident labor of making allotments, and was never more carefully conducted. The provision of adequate school facilities for Indian children and the locating of adult Indians upon farms involve the solution of the "Indian question."
Everything else: rations, annuities, and tribal negotiations, with the agents, inspectors, and commissioners who distribute and conduct them-must pass away when the Indian has become a citizen, secure in the individual ownership of a farm from which he derives his subsistence by his own labor, protected by and subordinate to the laws which govern the white man, and provided by the General Government or by the local communities in which he lives with the means of educating his children. When an Indian becomes a citizen in an organized State or Territory his relation to the General Government ceases, in great measure, to be that of a ward; but the General Government ought not at once to put upon the State or Territory the burden of caring for the Indian.

The good work of reducing the larger Indian reservations, by allotments in severalty to the Indians and the cession of the remaining lands to the

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

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

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

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

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

Mr. MANSUR. By the way, I desire to say to the House that I visited this reservation during this last summer,

and our soldiers at Fort Crosby told me that the Wendat are the most distinctly warrior Indians left on the continent today; that they keep themselves farther away from white people, and have less to do with them than any others; that they are only to be seen when they come to the agencies for the purpose of drawing their annuities, and hence they are wholly wild and savage; and when it comes to allotment, you cannot bring the same influences to bear upon them that you can bring to bear upon other Indians more civilized.

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

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

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

The SPEAKER. The Clerk will report the Bill.

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

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

HOUSE

Friday May 29, 1908

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

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

The SPEAKER. Is a second demanded?

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

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

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

I might also say at this point that Major Hans was present during the hearings before the subcommittee and the full committee of the House Committee on Indian Affairs, and made many valuable suggestions, and had there the agreement which was entered into with the Indians, so that this bill could

be made to conform in every respect to the wishes of the Indians, as expressed in the agreement. The bill provides that 160 acres of land shall be allotted to each Indian.

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

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

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

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

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

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

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

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

Mr. HACKNEY. Mr. Speaker, the gentleman from New Dakota has stated the terms of this bill correctly, and it seems to me there is

no question but that the bill should pass as amended.

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

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

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

Mr. HACKNEY. The reports are that these Indians are capable now of assuming the duties of citizenship. They are a very intelligent class of Indians.

Mr. FERRIS. How many are there?

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

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

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

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

Mr. MONDELL. Mr. Speaker, I have gone over this bill, and I believe it has been very carefully prepared. Inasmuch as it is necessary to begin at the very foundation in this case and to provide, first, for allotments, then for opening the lands to settlement, and for reservation of coal, the bill is quite a long one. I think the committee has given the bill careful consideration, and it seems to me its provisions are excellent. It does justice

to the Indians, and I believe will promote the interests of the incoming settlers.

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

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

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

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

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

In my judgment this is a meritorious bill, and should receive universal approval. It makes ample provision for the protection of the rights of the Indians and, so far as I can see, it

will have a tendency to promote the general welfare and advancement of the Indians. It will stimulate the habit of industry, thrift, and economy to an extent hitherto unknown under old conditions. After the surplus lands are disposed of and the cost and expenses provided for in the bill deducted the balance of the moneys shall be paid into the Treasury of the United States and placed to the credit of the Indians.

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

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

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

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

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

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

## Appendix 4: Legislative History of The Treaty with the Wendat

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

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

Consideration of the Treaty with the Wendat

SPEECH OF SEN. JAMES W. GRIMES OF IOWA:

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

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

SPEECH OF SEN. LAZARUS W. POWELL OF KENTUCKY:

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

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

SPEECH OF SEN. SOLOMON FOOT OF VERMONT:

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

will emerge a state before long.

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

In the many years since the first treaty was made at Wauseon, the Maumee have been reduced in number and no longer inhabit parts of their territory. Their descendants have become among the most peaceable of Indians and trade and commerce between the Maumee and the noble residents of Fort Crosby have expanded to the benefit of both parties. I hope that the Wendat may benefit by example and learn from the many new residents of their neighboring lands.

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

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

Treaties with the Indians are an expedient end to settle tensions on the frontier between our settlers and the Indians until our communities are numerically numerous enough to defend themselves from any unwanted Indian intrusion. I will support this treaty, consistent with my support for most Indian treaties submitted to us by the President, but nothing in this treaty, like any that have come before it, will prevent American frontiersmen from making use of the lands around them.

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

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

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

SPEECH OF SEN. GEORGE PUGH OF OHIO:

Our frontiersmen cry out for the stable finance provided by the

# MAP

**Not Drawn to Scale