IN THE
SUPREME COURT OF THE UNITED STATES

DAVID MICHAEL DAVIS,

Petitioner,

v.

THE STATE OF MINNESOTA

Respondent.

On Petition for Writ of Certiorari
To the Minnesota Supreme Court

PETITION FOR WRIT OF CERTIORARI

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ISSUES

Has the State of Minnesota infringed upon the right to tribal self-government of the Minnesota Chippewa Tribe?

Is the assertion of state civil regulatory authority in this matter preempted under Public Law 280 exceptions?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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JURISDICTION

Under Supreme Court Rule 13 a petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review. Notice of Entry of Order for State v Davis, 773 N.W.2d 66, 68 (2009) was November 16, 2009.

INTRODUCTION

The Minnesota Supreme Court's Davis Syllabus simply declared that

> State court has subject-matter jurisdiction over appellant's traffic violations because Congress has not preempted Minnesota from enforcing its traffic laws against appellant in state court.

While that statement is true for non-Indians in Minnesota, the United States Constitution and United States Supreme Court federal Indian case law have preempted states from infringing on tribal jurisdiction, self governance, self-determination, states deciding tribal membership, and certainly on-reservation, tribal sovereign interests, all of which are part of the inherent rights of tribes.[1]

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[1] See *Opinion of the Solicitor of the Department of the Interior on the Powers of Indian Tribes* 55 I.D. 14 Oct. 25, 1934 submitted as part of the Senate record for the adoption of the Indian Reorganization Act declaring that "under section 16 of the Wheeler-Howard Act (48 Stat. 984, 987) the 'powers vested in any Indian tribe or tribal council by existing law' are those powers of local self-government which have never been terminated by law or waived by treaty." See also Summary 8. "To administer justice with respect to all disputes and offenses of or among the members of the tribe, other than the ten major crimes reserved to the Federal courts. The

Appellant Davis is an enrolled member of the Minnesota Chippewa Tribe[2] (MCT), cited for no proof of insurance while driving within the boundaries of one of the several MCT Reservations in Minnesota known as the Mille Lacs Reservation. Minnesota Courts now would not recognize their lack of subject matter jurisdiction, nor transfer the matter to the Mille Lacs Reservation's tribal court, for traffic conduct that the Minnesota Supreme Court previously recognized in 1997 as civil regulatory over tribal members on-reservation in State v Stone.[3]

Minnesota Chippewa Tribe adopted its original Constitution." See also Indian Civil Rights Act of 1968 ICRA) as amended.

[2] See Revised Const. of Minnesota Chippewa Tribe, Minnesota, Art. 1, Sec. 1. The Minnesota Chippewa Tribe is hereby organized under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended. PREAMBLE-- We, the Minnesota Chippewa Tribe, consisting of the Chippewa Indians of the White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), and Grand Portage Reservations and the Nonremoval Mille Lac Band of Chippewa Indians, in order to form a representative Chippewa tribal organization, maintain and establish justice for our Tribe, and to conserve and develop our tribal resources and common property; to promote the general welfare for ourselves and descendants, do establish and adopt this constitution for the Chippewa Indians of Minnesota in accordance with such privilege granted the Indians by the United States under existing law. (Appx Ex).

[3] State v. Stone, 572 N.W.2d 725 (Minn. Dec 11,

Minnesota Courts appear to have adopted an apartheid-type jurisdictional approach to state law enforcement focused on MCT members--who in this case are cited for on-reservation, civil regulatory traffic matters on any of their several MCT reservations throughout northern Minnesota---except when the MCT member is on the one reservation that the individual member's enrollment is associated.[4] This jurisdictional, preemption/infringement problem has been happening for nearly a decade when the Minnesota Supreme Court decided in State v R.M.H. in 2000, a decade after Duro v Reina and the Congressional *Duro fix.*

Minnesota "state courts looking for any excuse to expand state taxing [fining] power are willing to rely on dicta from a case that Congress has

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1997). (In this case, for the first time the Minnesota Supreme Court developed its version of the Cabazon test to determine whether a law is civil-regulatory or criminal-prohibitive for purposes of state jurisdiction for on reservation traffic violations like no driver's license, no proof of insurance, no child restraints on the White Earth (MCT) Reservation involving a MCT member enrolled at White Earth).

[4] See State v Davis, 773 N.W.2d 66, 68 (2009), "The Minnesota Chippewa Tribe is a federally recognized Indian tribe with six member bands, including the Leech Lake Band and the Mille Lacs Band. Davis is an American Indian registered with the Leech Lake Band. (Appx Ex).

legislatively invalidated"[5] with the Duro fix in 1990. Twenty years after the Duro Fix, Minnesota's Indian Country needs a 2010 "Davis fix" from this Court to re-affirm the rights of tribal governments' civil regulatory authority over all on-reservation Indians[6], especially when in this case Davis is an enrolled member of *the Tribe*, on one of the several MCT's reservations.

Meanwhile, Minnesota Courts are continuously infringing on the rights of Tribes to make their own laws and be ruled by them, to determine their membership[7] and to exercise their

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[5] See Scott A. Taylor, *The Unending Onslaught on Tribal Sovereignty: State Income Taxation of Non-Member Indians,* 91 Marquette L. Rev. 917, 971 (2008).

[6] See ICRA, 25 U.S.C. §1301(4) "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies.

[7] Williams v. Lee, 358 U.S. 217, 220 (1959), See also McClanahan v. Arizona Tax Comm'n, 411 U.S. 164, 172 (1973). (Questions of whether federal Indian legislation preempts state law are a separate and distinct inquiry to which the right of tribal self-government provides a "backdrop against which the applicable treaties and statutes must be read). *See also* White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 144 (1980) ("When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory

own subject matter jurisdiction based on inherent tribal sovereignty, especially for civil regulatory matters[8]. Minnesota courts appear to not understand[9] *why* Congress' "Duro fix" was applied to criminal matters *expressly* in Indian Country. The State v Hart Court remarked that the Lara Court

> did not address Indian tribes' inherent sovereignty over prosecutions for civil/regulatory offenses. More importantly, the Court did not address states' authority to prosecute nonmember Indians under criminal or civil law or whether states may have concurrent jurisdiction over nonmember Indians. As the Court stated, "the change at issue here is a limited one.... [T]his case involves no interference with the power or authority of any State.

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interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest").

[8] *See* California v. Cabazon Band of Mission Indians, 480 U.S. 202, 215, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987). (Applied pre-emption balancing test for federal interests, tribal interests and state interests under Public Law 83-280.

[9] See State v. Hart, 2006 WL 1229587 (Minn.App. May 09, 2006), review denied (Jul 19, 2006)(R'hrg Denied). See U.S. v Lara, 541 U.S. 193, 124 S.Ct. 1628, (2004).

Certainly, the Lara Court did not mean that if states were already misinterpreting or skipping over federal statutes preempting state jurisdiction in Indian country with regard to nonmember Indians on a reservation, for the State to continue infringing on tribal sovereignty without interference.

Minnesota Courts routinely conduct only a partial preemption analysis for civil regulatory jurisdiction under Public Law 280 always heralding section (a), and almost always skipping over important, preempting *exceptions* contained in subsections

> (b) "Nothing in this section shall . . . deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.[10]

And/or in subsection

> (c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, *be given full force and effect in the*

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[10] Public Law 83-280; 18 U.S.C. § 1162(b), 28 U.S.C. § 1360(b).

determination of civil causes of action pursuant to this section.[11]

Shortly after State v Stone in 1997, all six constituent Band Reservation governments of the MCT had adopted tribal ordinances to establish tribal courts, comprehensive traffic laws and tribal police departments, which overall operate fairly consistent with Minnesota's traffic laws under cooperative law enforcement agreements[12] with adjacent local counties. The Mille Lacs Band tribal codes provide for jurisdiction over traffic matters involving members of the MCT.[13]

Minn. Stat. 626.90 provides for a cooperative law enforcement agreement between the Mille Lacs County and the Mille Lacs Band[14] and provides for

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[11] 28 U.S.C. § 1360(c). (Emphasis added).

[12] *Agreement Relating to the Use of Law Enforcement Facilities and Personnel in Cooperation Between Mille Lacs Band Law Enforcement Agency and the County of Mille Lacs*, Jurisdiction and Defense Not Waived—"Nothing in this agreement shall be construed to affect or waive the jurisdiction of the State of Minnesota, the United States, or the Mille Lacs Band of Chippewa Indians which each has under present laws or may have under future laws."

[13] The Mille Lacs Bands Codes provide for Judicial Authority and Jurisdiction since 1996 in Title 5 MLBSA Ch 2 § 112. "The Court of Central Jurisdiction shall have criminal jurisdiction over Mille Lacs Band members and non-member Indians alike and as may otherwise be prescribed by law."

[14] Minn. Stat. 626.90.

Mille Lacs Band jurisdiction over MCT members.[15] The area where Davis was observed by the officer and subsequently pulled over are all within the boundaries of the Mille Lacs reservation described in the 1855 Treaty.[16] [17]

In Davis the Minnesota Supreme Court *reasoned* the Mille Lacs Band government has superior inherent powers over the MCT, but never inquired or considered Davis' right to travel in the 1855 as a descendent of an 1855 signatory band (Pillager) enrolled at Leech Lake in the northern part of the 1855 ceded territory, much less fully consider the Mille Lacs Band's codes.[18] Therefore,

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[15] Id., Subd. 2(c)(a)(2). (the 1991 state law specifically cites to the 1855 Treaty and provided that (c) The band shall have concurrent jurisdictional [if three criteria are met] **over all Minnesota Chippewa tribal members within the boundaries of the Treaty of February 22, 1855, 10 Stat. 1165, in Mille Lacs County, Minnesota**; and (3) concurrent jurisdiction over any person who commits or attempts to commit a crime in the presence of an appointed band peace officer within the boundaries of the Treaty of February 22, 1855, 10 Stat. 1165, in Mille Lacs County, Minnesota. (Emphasis added).

[16] Treaty of February 22, 1855, 10 Stat. 1165. (Appx Ex).

[17] *See* Map of Indian Land Cessions and Reservations to 1858 (Appx Ex).

[18] In Davis the Court decided because "the MCT constitution does not possess any apparatus for law enforcement or judicial decision-making" and did not

Davis was never outside of his, *treaty reserved Indian Country* and section (c) of Public Law 280 must be recognized as a permanent, *civil* retrocession of state jurisdiction and exclusive repatriation of the reservation tribal government's authority over traffic matters for Indians' on reservation.

MCT members' reserved rights to hunt, fish and gather[19] are really the rights to obtain food, clothing and shelter in Indian Country, which must

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have a comprehensive traffic ordinance---*tribal* interests were *deemed* minimal compared to the Mille Lacs Band interests. Then the Davis Court decided Davis was a non-member of Mille Lacs and did not give any favorable consideration about the MCT enrollment, and *hocus pocus* -- magically the state had a greater **self**-interest . However, much like the *Duro fix* was adopted to close the federal jurisdictional gap--the Mille Lacs Bands Statutes were not fully considered. *See* Judicial Authority and Jurisdiction 2 MLBSA § 112, (1996) preceding State v Stone (1997), State v R.M.H.,(2000)(Pet for Re'Hrg Denied) State v. Losh, 755 N.W.2d 736 (2008) (Cert Denied) and State v Davis (2009). Minnesota courts are applying *their* "reservation member" analysis instead of "on-reservation Indian" and as such are following Duro v Reina to exercise State civil regulatory authority over whomever the Minnesota courts determine are nonmembers.

[19] *See* Treaty with the Chippewa, 1855, Feb. 22, 1855, 10 Stat., 1165, Ratified Mar. 3, 1855, Proclaimed Apr. 7, 1855. (Appx Ex).

necessarily require a right to travel[20] throughout Indian Country, for which the modern canoe is the automobile used to achieve a modest living[21]. Here

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[20] U.S. v Gotchnik, 57 F. Supp. 2d 798 (1999) (treaty rights to travel examined in Minnesota's Boundary Waters Canoe Area. held that Treaty of 1854, giving Native American band right of access to traditional fishing grounds did not give band right of unrestricted travel to and from protected fishing grounds, and regulations prohibiting use of snowmobiles and boat motors in federal wilderness area did not conflict with treaty rights. 36 C.F.R. § 261(a). Aside from federal restrictions on travel, tribal traffic codes must apply to all Indians on reservation conduct exclusively under 28 U.S.C. 1360(c) as any tribal traffic and tribal court ordinances shall "*be given full force and effect in the determination of civil causes of action pursuant to this section*" in Indian Country. See also U.S. v. Smiskin, 487 F.3d 1260, 07 Cal. Daily Op. Serv. 5485, 2007.

[21] *See* U.S. v Bressette and Nahgahnub, 761 F. Supp. 658 (1991) which followed the Voigt cases which involved the treaties of 1837, 1842 and 1854. Bressette was a member of the Red Cliff Band (in Wisc.) and Nahgahnub is a member of the MCT's Fond du Lac Band (in Minn), and they were charged with a criminal gathering offense for migratory bird feathers from the ceded territories, with sales in Duluth, Minnesota. The 1824, 1837, 1842, and 1854 treaties reserved full usufructruary rights for the Chippewa in the ceded territories, including commercial activity. *See* LCO v. Wisc., 653 F.Supp.

appellant Davis, an enrolled MCT member was stopped on one of his MCT reservations, en route to his modern occupational method of gathering to earning a modest living by working as a security guard at the reservation casino.[22]

It seems the Minnesota Supreme Court is gambling that open violation of federal due process rights of Indian tribes will not receive review and scrutiny by this Supreme Court because their decision accepts that Appellant

> Davis argues, and we assume for purposes of this appeal, that the area where he stopped his vehicle is land held in trust by the United States for the Mille Lacs Band of Chippewa Indians[23] [. and] The Minnesota Chippewa Tribe (MCT) is a federally recognized Indian tribe with six member bands, including the Leech Lake Band and the Mille Lacs Band. Davis is an American Indian registered with the Leech Lake Band. He is not a member

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1420 (W.D.Wis. 1987). "the rights to all the forms of animal life, fish, vegetation...and the use of all methods of harvesting employed in treaty times and those developed since...[t]he fruits....may be traded and sold to non-Indians, employing modern methods of distribution and sale...to enjoy a modest living..." *See also* Mille Lacs v Minnesota generally.

[22] California v. Cabazon Band of Mission Indians, 480 U.S. 202, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987).

[23] Davis 773 N.W.2d at 67.

> of the Mille Lacs Band and does not reside on the Mille Lacs Reservation. At the district court, Davis argued that the court lacked subject-matter jurisdiction because he was an Indian who committed an offense in Indian Country--the Mille Lacs Reservation--and that therefore only the tribal court had jurisdiction.[24]

After accepting appellant Davis is an enrolled member of MCT, in MCT on-reservation Indian Country, the Minnesota Supreme Court still upheld their own state jurisdiction for this civil regulatory matter. Even under the most obvious Indian and Indian Country factors, Minnesota courts choose to exercise jurisdiction in a manner most favorable to the state by deciding outcomes and penalties based on state courts determining who is the wrong type of MCT Indian on the wrong reservation and then prosecute, convict and extract fines and impose consequences. These matters all should properly be decided in tribal courts. It is readily apparent that Minnesota Courts need remedial guidance from this Court in the form of a contemporary 2010 *Davis fix.*

Members, nonmember Indians, non-Indians and "Duro fix"

In 1987 the Cabazon Court provided a balancing test of tribal, federal and state interests to determine whether States may exercise their

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[24] Id. at 68.

jurisdiction to control on-reservation, civil regulatory matters.[25] It took another decade before the Minnesota Supreme Court determined it lacked subject matter jurisdiction over tribal members' civil/regulatory traffic conduct on the White Earth Reservation of the MCT. However, three years later in State v R.M.H. the Minnesota Supreme Court held "that with respect to the interests of the tribe, nonmember Indians "are, for practical purposes, the same as non-Indians."[26] This practice by Minnesota Courts violates the federal due process rights of tribes. Inherent, tribal sovereignty is being greatly infringed upon which is really the reason why Congress had to pass the "Duro fix"[27] to expressly repatriate nonmember criminal jurisdiction to the tribes. The "Duro" fix in one simple sentence declared

> An Act to make permanent the legislative reinstatement, following the decision of Duro against Reina (58 U.S.L.W. 4643, May 29, 1990), of the power of Indian tribes to exercise criminal jurisdiction over Indians.

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[25] See California v. Cabazon Band of Mission Indians generally.

[26] Davis citing State v. R.M.H.,617 N.W.2d 55, 63 (Minn. 2000).

[27] Act of Nov. 5, 1990, Pub. L. No. 101-511, § 8077(b), 104 Stat. 1892 (25 U.S.C. 1301(2)).

The Fix was in prompt response to the 1990 Duro v Reina[28], Congress enacted legislation that reinstated inherent tribal jurisdiction over non member Indians, thereby closing the jurisdictional gap that the Duro Court had created. The legislation amended Indian Civil Rights Act's (ICRA)[29] definition of a Tribe's "powers of self-government" to include "the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians."[30] ICRA defines "Indian" to mean any per son who would be subject to federal criminal jurisdiction as an "Indian" under 18 U.S.C. 1153.[31]

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[28] Duro v. Reina, 495 U.S. 676, 110 S.Ct. 2053, 109 L.Ed.2d 693 (1990). See also United States v. Lara, 541 U.S. 193, 200 (2004), the Court held that Congress "does possess the constitutional power to lift the restrictions on the tribes' criminal jurisdiction over nonmember Indians."

[29] See Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-03)

[30] 25 U.S.C. 1301(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

[31] See 91 Marq. L. Rev. 917, 969 citing 25 U.S.C. 1301(4). The initial legislation was effective until September 1991. § 8077(d), 104 Stat. 1893. After the

Congress decided that permanent legislation was appropriate because

> nonmember Indians "own homes and property on reservations, are part of the labor force on the reservation, * * * frequently are married to tribal members," receive many tribal ser vices, and have other close ties to Tribes.[32] Congress also relied on the fact that "[u]ntil the Supreme Court ruled in the case of Duro, tribal governments had been exercising criminal jurisdiction over all Indian people within their reservation boundaries for well over two hundred years."[33]

The same is true for inherent *civil authority* necessarily consistent with self government on reservations because

> It was common knowledge, at least to those federal officials administering federal Indian policy and to others in

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legislation was enacted, Congress conducted "extensive hearings." S. Rep. No. 153, 102d Cong., 1st Sess. 12-13 (1991). As a result of those hearings, Congress made the legislation permanent. Act of Oct. 28, 1991, Pub. L. No. 102-137, § 1, 105 Stat. 646.

[32] Id.

[33] Id. *citing* S. Rep. No. 168, 102d Cong., 1st Sess. 2 (1991).

> proximity to Indian Country, that many reservations contained Native Americans from other tribes.[34] In addition, federal Indian policy often forced different tribes to consolidate on a single reservation.[35] Given this known and substantial intermixing, we find no efforts on the part of states to try to impose their taxes on Indians of one tribe living on the reservation of another tribe. Those efforts would not come until a hundred years later when the passage of time caused judges to forget that the phrase "Indians not taxed" had any continuing legal significance. [36]

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[34] Id. at 937. See, e.g., Treaty of May 7, 1868, art. II, 15 Stat. 649, 650 (setting the boundaries of the reservation of the Crow Tribe for the exclusive use of the Tribe plus "such other friendly tribes or individual Indians as from time to time they may be willing ... to admit amongst them ...").

[35] Id. See, e.g., Ntsayka Ikanum: Our Story, found at: http://www.grandronde.org/culture/# (accessed October 2, 2007) (telling the story of the consolidation of many tribes into the Confederated Tribes of Grand Ronde).

130 See Randall J. Gingiss, Forcing Fairness in State Taxation, 33 Ohio N.U.L. Rev. 41, 45 (2007) (noting that as late as 1890, the property tax provided 72% of all state tax revenue and 92% of all local tax revenues).

[36] Id. at 938.

Additionally the 1855 Chippewa Treaty in Minnesota contains federal anticipatory language of nonmember Indians on reservations by including in Article IX

> The said bands of Indians, jointly and severally, obligate and bind themselves not to commit any depredations or wrong upon other Indians, . . . to submit all difficulties between them and other Indians to the President, and to abide by his decision in regard to the same, and to respect and observe the laws of the United States, so far as the same are to them applicable.[37]

It was not until 1885 that federal legislation was enacted granting federal courts jurisdiction over certain major crimes committed by an Indian against another Indian. Prior to 1885, such offenses were tried in tribal courts.[38]

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[37] 1855 Treaty with the Chippewa, Art. IX.

[38] 91 Marq. L. Rev. 917, 938, See Ex parte Crow Dog, 109 U.S. 556 (1883)(federal court had no jurisdiction to try an Indian for the murder of another Indian). Section 1153 is predicated on the Act of March 3, 1885, § 8, 23 Stat. 385, and former sections 548 and 549, 18 U.S.C. (1940 ed.). The Major Crimes Act was passed in reaction to the holding of Crow Dog, see Keeble v. United States, 412 U.S. 205, 209-12 (1973), and United States v. Kagama, 118 U.S. 375, 383 (1886).

The Duro fix was necessary because the U.S. Supreme Court had found and made distinction between member Indians and nonmember Indians in Duro v Reina.[39] Ironically, ten years after Duro v Reina and the "Duro fix" by Congress, the Minnesota Supreme Court decides to follow Duro v Reina in State v R.M.H.[40] Minnesota Courts have forgotten how to understand their own lack of subject matter jurisdiction for civil regulatory traffic matters involving on-reservation Indians. Similarly, Minnesota Courts find they can ignore federal statutes, treaties and case law preempting jurisdiction and unilaterally decide that *certain* Indians are now "for [their] practical purposes, the same as non-Indians."[41] There is no showing by Minnesota Courts of where the longstanding, historically-recognized, inherent authority of tribes over any Indians on-reservation was taken from

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[39] Duro v Reina, 58 U.S.L.W. 4643, May 29, 1990.

[40] State v. R.M.H.,617 N.W.2d at 65-67 (In a 4-3 split court Dissenting Justices Stringer, Page and R. Anderson correctly analyzed federal Indian law preemption for nonmember Indians and pointed to the flaws in that "the theory of the state is simply that because R.M.H. is not a member of the White Earth Tribe he should be subject to jurisdiction of the state highway regulations . . ." "Pub.L. 280 unambiguously fails to distinguish between member and non-member Indians, state jurisdiction over R.M.H. is plainly lacking. The holding of the majority regarding the applicability of Pub.L. 280 thus ends the discussion of preemption." (Appx Ex).

[41] Davis citing RMH at 63.

Tribes or delegated by Congress. It is simply a judicially sanctioned scheme to impose burdens (taxes/fines) and control Indians on-reservation conduct which will continue to repeat itself[42] until this Court educates and directs the Minnesota Courts otherwise with the 2010 *Davis fix.*

Preemption, Infringement and Abstention

The Cabazon Court provided a preemption analysis to recognize all of the Congressional efforts, acts and intent as self described

> It is hereby declared to be the policy of Congress ... to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities.[43]

In Indian Country, the canons of construction apply to treaties and also to federal statutes affecting Indian immunities and must be interpreted in the light most favorable to the non drafting parties, with

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[42] See Nason v 1991 Buick (Appx Ex) following Davis and R.M.H. wrong type of MCT member on wrong reservation Minnesota Supreme Court created Indian law. See also FN 83.

[43] Cabazon citing Mescalero citing 25 U.S.C. § 1451

any ambiguities resolved in favor of Indians. [44]

Tribal Interests Cabazon Analysis

It is important to recognize that not all laws with *state* criminal penalties and labels may actually be civil regulatory, therefore full consideration of federal and tribal interests before overriding state interests become necessary. The Cabazon case recognized California was imposing

> **a state burden on tribal Indians** in the context of their dealings with non-Indians since the question is whether the State may prevent the Tribes from making available high stakes bingo

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[44] See Bryan v Itasca, 426 U.S. 373, 96 S.Ct. 2102 (1976) noting the failure of congressional reports concerning statute which extended civil jurisdiction of states to Indian reservations to mention authority to tax was significant in the application of canons of construction applicable to statutes affecting Indian immunities as some mention would normally be expected if such a sweeping change in the status of tribal government and reservation Indians had been contemplated by Congress. 18 U.S.C.A. § 1162; 28 U.S.C.A. § 1360. See also Minnesota v. Mille Lacs Band of Chippewa Indians et al 526 U.S. 172 (1999) 124 F.3d 904, affirmed. See also Minnesota Revenue letter to MCT Pres. Deschampe, Aug. 13, 2002, post R.M.H. state taxation of MCT members not followed for on reservation MCT's on reservation earnings. (App Ex).

games to non-Indians coming from outside the reservations. Decision in this case turns on whether state authority is pre-empted by the operation of federal law; and "[s]tate jurisdiction is pre-empted ... if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." *Mescalero*, 462 U.S., at 333, 334, 103 S.Ct., at 2385, 2386. **The inquiry is to proceed in light of traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its "overriding goal" of encouraging tribal self-sufficiency and economic development**. Id., at 334-335, 103 S.Ct., at 2386-2387.**FN19** See also, *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143, 100 S.Ct. 2578, 2583, 65 L.Ed.2d 665 (1980).

> **FN19.** In *New Mexico v. Mescalero Apache Tribe*, 462 U.S., at 335, n. 17, 103 S.Ct., at 2387, n. 17, **we discussed a number of the statutes Congress enacted to promote tribal self-**

government. The congressional declarations of policy in the Indian Financing Act of 1974, as amended, 25 U.S.C. § 1451et seq. (1982 ed. and Supp.III), and in the Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. § 450et seq. (1982 ed. and Supp.III), are **particularly significant in this case: "It is hereby declared to be the policy of Congress ... to help develop and utilize Indian resources, *both physical and human*, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities."** 25 U.S.C. § 1451. Similarly, "[t]he Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian

> people through **the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.**" 25 U.S.C. § 450a(b).

These are important federal interests. They were reaffirmed by the President's 1983 Statement on Indian Policy. **FN20**

> **FN20.** "It is important to the concept of self-government that tribes reduce their dependence on Federal funds by providing a greater percentage of the cost of their self-government." 19 Weekly Comp. of Pres.Doc. 99 (1983).

Cabazon at 216-218, and at 1092-93. (Emphasis added). The Cabazon Court went on to declare that

> These policies and actions, which demonstrate the Government's approval and active promotion of tribal bingo enterprises, are of particular

> relevance in this case. The Cabazon and Morongo Reservations contain no natural resources which can be exploited. The tribal games at present provide the sole source of revenues for the operation of the tribal governments and the provision of tribal services. They are also the major sources of employment on the reservations. Self-determination and economic development are not within reach if the Tribes cannot raise revenues and provide employment for their members. ***The Tribes' interests obviously parallel the federal interests.***

Id at 219. (Emphasis added). Here Davis was traveling in his new canoe to his contemporary employment at the reservation casino. This MCT reservation has tribal government, tribal courts, tribal codes and ordinances, tribal law enforcement and tribal courts. What are Minnesota courts' interests in nonmembers, and now wrong type of MCT member on reservation??

In *The Unending Onslaught on Tribal Sovereignty: State Income Taxation of Non-Member Indians* Prof. Taylor describes how

> Justice Thurgood Marshall, in McClanahan, reiterated the importance of federal preemption.[45] He looked at

[45] 91 Marq. L. Rev. 917, 957, See McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 165

the treaties and relevant federal legislation.[46] He also recognized the importance of the Navajo Nation's sovereignty and included this as an important consideration, primarily because the Navajo Nation, like the Cherokee Nation, had a political identity that existed before the arrival of the Europeans and also had entered into treaties with the United States.[47] He noted, however, that 20th century Supreme Court cases had given states latitude over non-Indians within Indian Country.[48]

A careful reading of his opinion shows that Justice Thurgood Marshall's use of the phrase "reservation Indians" refers to Indians who were within Indian Country whether or not members of a particular tribe. This is demonstrated by his reference to federal criminal jurisdiction in which the federal

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(1973) ("We hold that by imposing the tax in question on this appellant, the State has interfered with matters which the relevant treaty and statutes leave to the exclusive province of the Federal Government and the Indians themselves. The tax is therefore unlawful as applied to reservation Indians with income derived wholly from reservation sources").

[46] Id. See id. at 173-74.

[47] Id. See id. at 168.

[48] Id. See id. at 172

> government, and not the state government, asserts criminal jurisdiction over crimes committed within Indian Country 1) by one Indian against another Indian or 2) by or against an Indian and involving a non-Indian. In these cases, the federal criminal jurisdiction arose so long as the person was an Indian. The specific tribal membership of the Indian was unimportant.[49] Under the relevant statutes, the federal policy of excluding state authority over Indians within

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[49] Id. See id. at 171 (Justice Marshall relies on Williams v. Lee, 358 U.S. 217, 219-220 (1959), which emphasizes that "if a crime was by or against an Indian, tribal jurisdiction or that expressly conferred by Congress has remained exclusive." The Court in Williams v. Lee relies on the decision of Donnelly v. United States, 228 U.S. 243, 252 (1912), which involved federal jurisdiction over a murder on the Hoopa Valley Reservation of a man who was a member of the Klamath Tribe. The federal statute in question merely referred to the murder of an Indian within Indian Country and not to his membership in the specific tribe. The facts in the Donnelly case indicate that the phrase "reservation Indian" means an Indian who is on a reservation whether or not he is a member. This distinction becomes important when we consider the effect of Duro v. Reina, 495 U.S. 676 (1990) and the federal legislation that superseded the holding in Duro. See discussion infra).

> Indian Country, irrespective of tribal membership, was quite clear.[50]
>
> Justice Marshall indicated that state concluded that the state power to tax did not extend to on-reservation activities of "reservation Indians," he clearly meant Indians who were members of the tribe and also those Indians who were members of other tribes. Federal law[51] and tribal law[52] often draw legitimate distinctions between Indians and non-Indians, especially in the hiring of employees. Most tribes find within their boundaries Indians who are members of other tribes. The historical record shows that intermarriage, trade, removal, the reservation system, and wars

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[50] Id. at 958. See, e.g., Donnelly v. United States, 228 U.S. 243, 252 (1912) (the term "Indian" in the Major Crimes Act included an Indian who was on the Hoopa Valley Reservation but was a member of the Klamath Tribe).

[51] Id. See, e.g., Morton v. Mancari, 417 U.S. 544 (1974) (upholding the validity of the Indian preference in hiring by the Bureau of Indian Affairs).

[52] Id. See Brendan O'Dell, *Judicial Rewriting of Indian Employment Preference*, 31 Am. Indian L. Rev. 187, 197-98 (2006/2007) (discussing Navajo law that required certain employers to follow a Navajo preference in hiring employees).

frequently caused the intermingling of Indians from different tribes.[53] In more recent times, intermingling comes about because tribes and the federal government hire professionals who are Native Americans from other tribes.[54] In addition, intermarriage among

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[53] Id. See, e.g., Renard Strickland, *Fire and the Spirits: Cherokee Law from Clan to Court* (Norman: University of Okla. Press 1975) (describing the effect of intermarriage and the role Cherokee members played in leadership roles of the Tribe); Carole Goldberg-Ambrose, *Of Native Americans and Tribal Members: The Influence of Law on Indian Group Life*, 28 Law & Society Rev. 1123, 1140 (1994) (describing the practice of some tribes taking prisoners of war from other tribes and then integrating them into their own communities); United States v. Rogers, 45 U.S. (4 How.) 567 (1846) (involving a white man who married a Cherokee woman and who the Cherokee Nation adopted into the Tribe), and Robert N. Clinton, Carole E. Goldberg, and Rebecca Tsosie, *American Indian Law: Native Nations and the Federal System*, 5th ed. (LexisNexis 2007) pp 136-37 (describing some examples of tribal separations, amalgamations, and consolidations).

[54] Id. See, e.g., New Mexico Taxation and Revenue Department v. Greaves, 864 P.2d 324, 325 (N.M. Ct. of App. 1993) (taxpayer was a member of the Rosebud Sioux Tribe in South Dakota but lived and worked, as a tribal judge, on the reservation of the Jicarilla Apache Tribe in New Mexico).

Native Americans contributes to intermingling.[55]

Justice Marshall indicated that state authority should not infringe tribal sovereignty.[56] But he did not indicate that such infringement was a categorical bar.[57] Instead, he stated that it should be the backdrop in which federal preemption is implied.[58] In looking at infringement, he emphasized that the right of native peoples to govern themselves was important.[59] Many non-member Indians play pivotal

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[55] Id. See, e.g., LaRock v. Wisconsin Department of Revenue, 621 N.W.2d 907, 908-9 (Wisc. 2001) (taxpayer was a member of the Menominee Tribe who married a member of the Oneida Tribe where she lived and worked).

[56] Id. at 959, See McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 172-73 (1973).

[57] Id. See id. at 172.

[58] Id. See id. ("The Indian sovereignty doctrine is relevant, then, not because it provides a definitive resolution of the issues in this suit, but because it provides a backdrop against which the applicable treaties and federal statutes must be read").

[59] Id. See id. ("It must always be remembered that the various Indian tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that of our own Government").

> governmental roles on reservations where they live and work. Although the facts in McClanahan involved a person who was a member of the Navajo tribe, it is clear that Justice Marshall was speaking broadly in a context in which the term "reservation Indian" included Indians who were members of other tribes.[60]

Taylor correctly argues that

> The McClanahan case is a good example of how the federal preemption law works. No specific treaty or law said that Arizona (or states generally) could impose their income taxes on reservation Indians.[61] Nonetheless, Justice Marshall read the totality of the treaties and federal legislation as having a general preemptive effect.[62] Given this approach, Arizona had to point to a specific piece of federal legislation authorizing its income taxation of reservation Indians.[63] It

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[60] Id.

[61] Id. at 962, See McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 167-71 (1973).

[62] Id. See id. at 173.

[63] Id. See id. at 178-79.

> could point to no such statute, and, accordingly, it lost its case in the Supreme Court.[64]

In Davis, the Minnesota Supreme Court relied on a very limited investigation of the tribal interests involved, which analysis failed to recognize the on-going, natural intermixings of tribal and nonmember Indians as an essential attribute of tribal sovereignty. Much less that the MCT is a federally-recognized Indian tribe with recognized treaty rights, formed under the Indian Reorganization Act of 1934 and the canons of construction and strong Congressional intent require ambiguities to be viewed in the light most favorable to tribes.

21st Century DAVIS Fix Preemption Test

While tribes want to rely on Cabazon, Bracker, McClanahan, Bryan v Itasca [County, Minn], Minnesota v Mille Lacs Band, and LCO it has been over twenty years since the Cabazon Court provided guidance and at least Minnesota courts need a more complete remedial, civil and regulatory preemption analysis and guidance from this Court.

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[64] Id.

Public Law 280

Preemption must necessarily begin with Public Law 280 in its entirety, which grants limited[65] criminal and civil jurisdiction over all Indians' conduct in *Indian Country*. Under the MCT Constitution all tribal members enjoy the "equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe"[66] which necessarily includes members' collective *inherent* civil rights, reserved treaty rights and civil regulatory control "to . . . maintain and establish justice for our Tribe, and to conserve and develop our tribal resources and common property; to promote the general welfare for ourselves and descendants,. . . "[67] throughout the MCT territories, which includes reservations, trust lands and treaty ceded territories.

Exceptions in Section (b)

In both the civil and criminal versions of Public Law 280(b) Congress provided that

> (b) "Nothing in this section shall . . . deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or

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[65] See Public Law 280, Sections (b & c). See e.g. Minnesota v Mille Lacs Band and LCO.

[66] MCT Const., Art. XIII, Rights of Members. (Appx Ex).

[67] Id. Preamble.

> fishing or the control, licensing, or regulation thereof.[68]

The rights to hunt, fish and gather cannot be meaningfully realized without the necessary and inherent right to travel, whether on reservation or throughout the ceded territories.

Historically, the right to ravel is, and always has been, necessary to all humans to effectuate the usufructuary rights to hunt fish and gather, whether for the Chippewa in Minnesota or peoples on any other continent. The Chippewa made a variety of treaties in the early 1800's with the United States of America to acquire vast tracks of lands, which later became the states of Michigan, Wisconsin and Minnesota. The northern half of the State of Minnesota was created from lands ceded by various treaties with Chippewa Bands including, but not limited to, the 1824, 1837, 1854 and 1855 Treaties with the Chippewas, wherein the inherent rights to fish, hunt and gather were expressly retained in the ceded territories and lands for reservations established for permanent homes, all of which was described in the Mille Lacs decisions.[69]

Anishinabe usufructuary rights have been held to be held individually, by each tribal member, by the United States District Court for Minnesota in

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[68] Public Law 83-280 18 U.S.C. § 1162(b), 28 U.S.C. § 1360(b).

[69] See Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 119 S.Ct. 1187, 143 L.Ed.2d 270 (1999).

U.S. v Bressette,[70] which Court recited the scope, thoroughness and diversity of resources historically gathered and used for trade and personal use by tribal members.

In 1999, the Mille Lacs Supreme Court also determined that

> [t]he 1855 Treaty was designed primarily to transfer Chippewa land to the United States, not to terminate Chippewa usufructuary rights. It was negotiated under the authority of the Act of December 19, 1854. This Act authorized treaty negotiations with the Chippewa "for the extinguishment of their title to all the lands owned and claimed by them in the Territory of Minnesota and State of Wisconsin." Ch. 7, 10 Stat. 598. The Act is silent with respect to authorizing agreements to terminate Indian usufructuary privileges, and this silence was likely not accidental. During Senate debate on the Act, Senator Sebastian, the chairman of the Committee on Indian Affairs, stated that the treaties to be negotiated under the Act would "reserv[e] to them [i.e., the Chippewa] those rights which are secured by former treaties." Cong. Globe, 33d Cong., 1st Sess., 1404 (1854).[71]

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[70] *See* U.S. v Bressette, 761 F. Supp. 658 (1991) following LCO and Voigt. cases.

[71] See Minnesota v. Mille Lacs Band , generally.

These Chippewa treaties were not unconditional surrender treaties, or peace treaties, but treaties negotiated between two sovereigns retaining rights in ceded territories and trading for lands. "United States treaties may be made by the President, by and with the advice and consent of the Senate.[72] States may not enter into treaties[73], and once made, shall be binding on the states as the supreme law of the land."[74] The Chippewa would never have understood at the time of treaties that their right to travel was subject to the United States, and probably not even Congress because

> Although Indian treaties are treated like federal statutes and can be abrogated or modified by Congress, Congress must clearly express its intent to do so. See Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 690, 99 S.Ct. 3055, 61 L.Ed.2d 823 (1979). Thus, an act of Congress abrogates or modifies a specific treaty right only when there "is clear evidence that Congress actually considered the conflict between its intended action on the one hand and the Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty."

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[72] Art. II, Sec. 2, U.S. Const.
[73] Art. I, Sec. 10, cl. 1.
[74] Art. VI, cl. 2.

> United States v. Dion, 476 U.S. 734, 739-40, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986).[75]

Without an Act of Congress to modify the inherent treaty right to travel, the treaty right has not been abrogated and jurisdiction has been withheld from the states under Public Law 280 (b).

Exceptions in Section (c)

Similarly, 28 U.S.C. 1360(c) functions as a federal mechanism for the civil repatriation of tribal jurisdiction under Public Law 280, which provides that

> (c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, *be given full force and effect in the determination of civil causes of action pursuant to this section.*[76]

A decade ago all six Reservation Band governments of the MCT have enacted Tribal Courts, adopted traffic laws and ordinances and created tribal Police Departments for law enforcement, especially traffic. For Davis' conduct on the Mille Lacs Reservation

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[75] Gotchnik at 509. See also FN 20.

[76] 91 Marq. L. Rev. at 964, citing 28 U.S.C. § 1360(c). (Emphasis added).

"full force and effect in the determination of civil causes of causes of action" must mean Tribal Court for any Indians' on reservation traffic offense.

Tribal members and nonmember Indians

Most of the factual circumstances involving nonmember Indians being on reservation are usually for

> family and employment reasons. Often the non-member Indian is married to a member, works for the tribe, works for the Bureau of Indian Affairs, or runs a business providing goods and services. The tribal and federal interests are critical to the tribe, its population, its culture, and its governance.[77]

Minnesota courts have not given fair consideration as to how a nonmember Indian may come to be on a reservation. The R.M.H. Court [78] focused on membership noting that

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[77] Id.

[78] See R.M.H. at 55-57, (State's authority to exercise its jurisdiction over civil/regulatory traffic offenses committed on a state highway on an Indian reservation by an Indian who is not an enrolled member of the governing tribe arises from State's interest in regulating the safe flow of traffic on its state-operated and maintained highways and is not preempted by the federal interest in tribal self-government, self-sufficiency, and economic development). (Appx Ex).

> R.M.H. and the state . . . stipulated that R.M.H. was not an enrolled member of the White Earth Band, although his mother is a member of the band. Finally, they stipulated that R.M.H. is an enrolled member of the Forest County Potawatomi Community in Crandon, Wisconsin and that the offenses occurred within the boundaries of the White Earth Reservation.[79]

R.M.H.'s mother[80] was an enrolled member of the MCT, and they were both living the MCT White Earth Reservation. The R.M.H. Court ignored this Potawatomi boy's connection to the enrolled members of the Minnesota Chippewa Tribe and the White Earth Band and Reservation because by

> treating non-member Indians the same as non-Indians ignores their important place in the history of Indian Country and ignores their current roles as mothers and fathers, husbands and wives, members of extended families, federal employees, tribal employees, teachers, lawyers, doctors, accountants, and entrepreneurs. They were and are a critical part of the fabric that makes up the social, cultural, and political

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[79] Id.

[80] Id.. at 57.

> fabric of those communities that we call reservation Indians.[81]

Taylor reminds us about what the Davis Court did not learn in that

> the Duro dicta became meaningless when Congress stepped in and reaffirmed the historical reality that non-member Indians have always been an important and critical part of cultural, social, economic, and political life of most federally recognized Indian tribes.[82]

Instead the Minnesota courts create judicial loopholes federal statutes look for the words "nonmember Indians" *missing* from Public Law 280.[83] IN support of these concepts the state argued

> that neither Pub.L. 280 nor Stone applies here because R.M.H. is not an enrolled member of the White Earth Band. The district court agreed with

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[81] 91 Marq. L. Rev. at 976.

[82] Id. at 973.

[83] See R.M.H. at 57, "Public Law 280, 18 U.S.C. § 1162(a) (1998), does not expressly grant Minnesota jurisdiction to prosecute an Indian who drives without a license and speeds while on the reservation of an Indian tribe of which he is not a member because driving without a license and speeding are civil/regulatory offenses that do not fit within the ambit of Pub.L. 280."

> the state, concluding that R.M.H. was subject to state jurisdiction. The court then denied R.M.H.'s motion to dismiss, found him guilty of the cited offenses, and ordered him to pay fines and surcharges totaling $167.50.[84]

Minnesota's Indian case law mistakes serve only to compound the misunderstandings of how federal preemption should be considered in the next Indian Country case in Minnesota. Compounding the problem further, is that the lower courts are required by law to follow the Minnesota Supreme Court's decisions.[85]

Public Law 280 state courts, especially Minnesota's need to be reminded all Tribes, as a government, originally had the authority, like any government, to provide law and order for its members. Treaties have not diminished this power nor has Congress provided otherwise.[86] The time is

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[84] Id. at 57-58.

[85] *See* Morgan v 2000 Volkswagen, 754 N.W.2d 587 (Minn. App. 2008) held state civil forfeiture laws did not apply to tribal member on reservation (Appx Ex), *but compare* Nason v 1991 Buick, 2010 WL 431443 (Minn. App. Feb. 9, 2010) following Davis, MCT Fond du Lac member's vehicle subject to Minn. Civil forfeiture because incident on Mille Lacs Reservation and Nason is MCT, but Mille Lacs Band member. (Appx Ex).

[86] 91 Marq. L. Rev. at 969. See again *Opinion of the Solicitor of the Department of the Interior on the*

now for a 21st Century preemption test, the *Davis Fix.*

Minnesota's tribes, bands and members need this Supreme Court to grant certiorari to review the many wrongful applications of Minnesota law have actually been preempted by Congress, yet without understanding or reckless disregard, infringed upon federal rights, treaty rights and inherent rights meant to protect tribes/bands and their members from states.

There is no evidence to show that Congress has expressly granted any states under Public Law 280[87], any jurisdiction with regard to civil regulatory

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Powers of Indian Tribes 55 I.D. 14 Oct. 25, 1934 the 'powers vested in any Indian tribe or tribal council by existing law' are those powers of local self-government which have never been terminated by law or waived by treaty."

[87] Bryan v Itasca, 426 U.S. 373, 384-385, 96 S.Ct. 2102, 2109, 48 L.Ed.2d 710 (1976). In short the consistent and exclusive use of the terms "civil causes of action," "aris(ing) on," "civil laws . . . of general application to private persons or private property," and "adjudicat(ion)," in both the Act and its legislative history virtually compels our conclusion that the primary intent of s 4 was to grant jurisdiction over private civil litigation involving reservation Indians in state court. "A fair reading of these two clauses suggests that Congress never intended 'civil laws' to mean the entire array of state noncriminal laws, but rather that Congress intended 'civil laws' to mean those laws which have

traffic matters on reservation---much less tribal enrollment and domestic relations of Indians. Virtually all federal Indian case law recognizes the important differences between Indians and non-Indians. The term non-Indian and nonmember are sometimes used interchangeably in federal and U.S. Supreme Court decisions, but if these decisions are read carefully the federal courts distinguish non-Indians from nonmembers in the case.

The Davis Court knew or should have known that it was preempted and was impermissibly infringing on MCT tribal sovereignty. The Davis Court should have abstained from misusing federal Indian law cases which often refer to non-Indians as nonmembers---and substituting their unilateral, *state* reasoning of enrollment to deny an enrolled MCT member his rights, privileges and immunities under inherent rights of tribes' to self governance and self determination to make their own rules and be governed by them. Minnesota Courts' infringement is based on who they consider to be nonmember Indians simply to exert and seize

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to do with private rights and status. Therefore, 'civil laws . . . of general application to private persons or private property' would include the laws of contract, tort, marriage, divorce, insanity, descent, etc., but would not include laws declaring or implementing the states' sovereign powers, such as the power to tax, grant franchises, etc. These are not within the fair meaning of 'private' laws." "Moreover, this interpretation is consistent with the title of Pub.L. 280 . . . ."

jurisdiction, which violates treaties with the United States, federal statutes and Congressional intent.

CONCLUSION

Davis' citation should have been dismissed for lack of subject matter jurisdiction in state court. The Mille Lacs Band of Ojibwe has subject matter jurisdiction over Minnesota Chippewa Tribal members, nonmembers and has also adopted traffic laws. Here, Davis was exercising his usufructuary rights in a contemporary way by working a job to obtain a commodity (money wages) that can be exchanged for food, clothing and/or shelter in today's *Indian Country*. He was gathering and traveling in his new canoe, the automobile.

Davis was trying to achieve a comparable living, using his new canoe to travel to his place of employment at the reservation casino. Had any Minnesota Court asked they would have found out that Davis enjoys all Federally recognized Indian benefits including attending the Mille Lacs Reservation's BIA *Nayahshing* school, to Indian Health Service clinic services-Federal services, Indian preference in Indian Gaming jobs and other Reservation jobs. Davis attends pow-wows and traditional ceremonies,—and he attends the Tribal Executive Committee meetings of Minnesota Chippewa Tribe's which are rotated throughout the six MCT reservations. Davis' "Indian wife" is a daughter of a Mille Lacs band member and his paternal grandfather is recognized as a hereditary Big Drum Chief of the Mille Lacs, East Lake reservation.

It is readily apparent that this Court must grant certiorari review for State v. Davis as the infringement issues are well past ripe and repeating. It is very important to the Minnesota Chippewa Tribe and all Indian Country for this Supreme Court to give fair protection to tribal sovereignty in the form of a modern and comprehensive preemption test for all states, but especially Public Law 280 states like Minnesota. The *Davis Fix*!

Dated: Feb 15, 2010

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