

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

United States of America,	)	
	)	DEFENDANT WAYNE MICHAEL
Plaintiff,	)	FISHER'S MOTION TO DISMISS THE
vs.	)	INDICTMENT
	)	
Wayne Michael Fisher,	)	Crim. No. 19-320 (SRN/LIB)
	)	
Defendant.	)	

Defendant Wayne Michael Fisher through his counsel, Daniel L. Gerdtts, Esq., respectfully moves the Court for an Order dismissing the Indictment as a violation of the protections afforded by the Double Jeopardy and Due Process Clauses of the Fifth Amendment to the United States Constitution. Defendant Fisher already has been prosecuted and punished for the same offenses in tribal court, pursuant to a plea in which it was understood that he would suffer no further prosecution in any other tribunal. Although the Supreme Court just last term revisited the question of what the Double Jeopardy Clause means when a State and the Federal Government seek to prosecute the same conduct in their respective tribunals, *see Gamble v. United States*, 139 S. Ct. 1960 (2019), it did not address the question raised by the circumstances of this case involving a tribal court and a subsequent prosecution for the same conduct in a federal district. Whether a tribal “offence” at the time of the adoption of the Fifth Amendment in 1791 would be considered to have derived from a sovereign power

distinct from that bestowed by the United States Government is questionable.

Likewise, the fundamental fairness inherent in the protections afforded by the Due Process Clause should not permit this prosecution to go forward after the understanding that induced Defendant to plead guilty in the tribal proceeding.

Dated: 21 January 2020

Respectfully submitted,

DANIEL L. GERDTS, LAWYER

*s/ Daniel L. Gerdts*

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