STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER JOSEPH CASWELL,

Defendant-Appellant.
_____/

Court of Appeals No. 353537

Mackinac Circuit Court Nos. 19-8346-AR and 19-8347-AR

92nd District Court Nos. 18D657689A-SM and 18D657689B-SM

BRIEF OF AMICUS CURIAE MICHIGAN DEPARTMENT OF NATURAL RESOURCES

ORAL ARGUMENT NOT REQUESTED

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

Rules

Treaties

Regulations

Constitutional Provisions

STATEMENT OF INTEREST OF AMICUS CURIAE MICHIGAN DEPARTMENT OF NATURAL RESOURCES

Appellant Walter Joseph Caswell argues that he is entitled to exercise fishing rights under the Treaty of Washington, 7 Stat 491 (Mar 28, 1836) (1836 Treaty), free from state regulation and prosecution, because he is a member of a group of Indians that claims to be a successor in interest to bands that signed the treaty. The Michigan Department of Natural Resources (DNR) has a strong interest in this case because a DNR conservation officer issued the citations for violating state fishing laws that led to Mr. Caswell's prosecution in state court.

But the DNR also has a broader interest in this case. The DNR is the state agency with the duty to "protect and conserve the natural resources of this state," including "foster[ing] and encourag[ing] the protection and propagation of game and fish." MCL 324.503(1). Consequently, the DNR has an interest in ensuring that every individual who is subject to state fishing laws complies with those laws. At the same time, it has a responsibility not to enforce state laws against individuals when federal law preempts those state laws, such as when tribal members exercise their rights under federal treaties. But neither the lower courts nor the parties have identified the correct legal framework for this treaty-right issue, which is the only framework that allows DNR to discern when it must enforce state law and when tribal treaty rights preempt those laws. Because it is not uncommon for conservation officers to interact with individuals claiming tribal treaty rights, the DNR has a strong interest in ensuring it has clear guidance and that courts apply

the correct standards. Thus, the DNR files this brief to assist this Court in understanding the analysis it should apply.

INTRODUCTION

Appellant Walter Joseph Caswell was cited by a DNR conservation officer for violating state fishing laws. The district court dismissed the citations because it concluded that the enforcement of state law infringed on treaty rights Mr. Caswell was exercising as a member of the Mackinac Tribe of Odawa and Ojibwa Indians (Mackinac Tribe). The circuit court reinstated the charges, holding that the Mackinac Tribe did not have treaty-tribe status because it is not a federally recognized Indian tribe. While the circuit court reached the correct result in reinstating the citations, neither lower court applied the proper legal principles to answer the question at the heart of this case: whether the Mackinac Tribe is a modern-day successor in interest to a treaty signatory and entitled to exercise treaty fishing rights.

No Michigan court has addressed the issue of treaty-tribe status, and neither has the Sixth Circuit. But cases from other jurisdictions are instructive. For a group of Indians to establish that it has treaty rights, the group must show that it (1) is descended from a treaty signatory and (2) has maintained an organized tribal structure since treaty times. *United States v Washington (Washington I),* 520 F2d 676, 693 (CA 9, 1975). In other words, it is not enough that the group be *an* Indian tribe; instead, it must be *the* Indian tribe that signed the treaty. Because Mr. Caswell did not make such a showing here, his fishing activities were governed by state law. The circuit court's decision to reinstate the citations against Mr. Caswell should be affirmed.

LEGAL BACKGROUND

1836 Treaty rights

In 1836, several bands of Ojibwe (Chippewa) and Odawa (Ottawa) Indians ceded to the United States nearly 14 million acres in the area that would become Michigan less than a year later. See Treaty of Washington, 7 Stat 491, art I (Mar 28, 1836) (1836 Treaty) (attached as Exhibit A); see also Royce Area 205, Michigan 1, <https://www.loc.gov/resource/g3701em.gct00002?sp=29> (accessed October 29, 2020). In ceding the land, the bands reserved to themselves the usual rights of occupancy, including the right to fish within the ceded area. 1836 Treaty, art XXIII. The continuing existence of those treaty rights is not in question. See generally *United States v Michigan,* 471 F Supp 192 (WD Mich 1979) (Great Lakes); *United States v Michigan,* unreported order of the United States District Court for the Western District of Michigan, issued November 2, 2007 (Case No. 2:73–cv–26) (inland).

State regulation and federal preemption

Fish in Michigan waters, including the Michigan areas of the Great Lakes, are the property of the State. *Aikens v Dep't of Conservation,* 387 Mich 495, 503 (1972); MCL 324.47301. The State undeniably has the authority to enact laws regulating taking fish within its boundaries. *Aikens,* 387 Mich at 502–503; MCL 324.47301; see also *Washington I,* 520 F2d at 684, citing *Geer v Connecticut,* 161 US 519 (1896) ("By virtue of its police power, the state has initial authority to regulate the taking of fish and game.") Further, because Michigan's fishing laws

are non-discriminatory, they generally apply to everyone, including Indians like Mr. Caswell. See *Washington I*, 520 F2d at 684, quoting *Mescalero Apache Tribe v Jones,* 411 US 145, 148–149 (1973). However, federal law, including federal treaties with Indian tribes, may preempt state law. US Const, art VI, cl 2.

The location where Mr. Caswell was cited for violating state fishing laws was in Michigan's jurisdiction. See *People v MacLeod*, unpublished per curiam opinion of the Court of Appeals, issued July 14, 2016 (Docket No. 326950), p 2, 2016 WL 3767496 (land "ceded to the United States in the 1836 Treaty . . . ceased to be 'Indian Country'") (attached as Exhibit B). Mr. Caswell was not fishing on an Indian reservation, tribal trust lands, or another place that would qualify as Indian country under federal law. See 18 USC 1151 (defining Indian country). Therefore, Mr. Caswell can only avoid the application of state law if he was exercising tribal treaty rights.[1]

Fishing in the 1836 Treaty ceded area

For Mr. Caswell to be able to rely on treaty rights as a defense, he must show he is a member of a tribe with treaty rights. An Indian tribe's rights under a treaty vests with the tribe at the time it signs the treaty. *Washington I,* 520 F2d at 692. The right reserved by the tribes or bands that signed the 1836 Treaty "is the communal property of the tribes which signed the treaty and their modern political

[1] Mr. Caswell asserts that DNR failed to establish a conservational necessity for imposing state regulations on his exercise of treaty rights. (Appellant's Br, pp 32–36.) However, this Court need not reach that issue because Mr. Caswell has not proved that the Mackinac Tribe has treaty rights.

successors; it does not belong to individual tribal members." *United States v Michigan,* 471 F Supp at 271–272 (citations omitted). Indian tribes or bands are not automatically entitled to assert treaty rights that *other* tribes or bands secured. See generally *Washington I,* 520 F2d at 693.

Five of the twelve federally recognized tribes in Michigan are known successors in interest to signatories of the 1836 Treaty: Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, Little Traverse Bay Bands of Odawa Indians, and Sault Ste. Marie Tribe of Chippewa Indians (Sault Tribe). Those tribes are parties to two federal consent decrees with the United States and Michigan.[2] As a result, members of those five tribes exercise fishing rights under the 1836 Treaty as governed by those consent decrees.

The 1836 Treaty lists bands north of the Straits of Mackinac as signatories. 1836 Treaty, signature pages. However, unlike the other 1836 Treaty tribes noted above, the Mackinac Tribe is not a party to those federal consent decrees, and it is not federally recognized as an Indian tribe. See generally *Mackinac Tribe v Jewell,* 829 F3d 754 (DC Cir 2016). The group is incorporated as a limited liability company under Delaware law and registered in Michigan as the Mackinac Tribe of

[2] A consent decree governing Great Lakes fishing was entered August 8, 2000. <https://www.michigan.gov/documents/dnr/consent_decree_2000_197687_7.pdf> (accessed October 29, 2020). A second decree, entered in 2007, governs the exercise of treaty rights in inland areas. <https://www.michigan.gov/documents/dnr/Proposed_Consent_Decreepages1-144_209977_7.pdf> (accessed October 29, 2020).

Odawa and Ojibwa Indians, LLC. Until the district court's ruling in this case, no court had determined the Mackinac Tribe to be a successor in interest to a signatory of the 1836 Treaty or entitled to exercise rights under that treaty.

There is no dispute that the five modern-day tribes that exercise 1836 Treaty rights do not represent all the bands that signed the treaty. In other words, there are bands that signed the 1836 Treaty for which a modern-day federally recognized tribe does not exist. The question this case presents is whether the modern-day group known as the Mackinac Tribe is a political successor to one or more of those bands, allowing Mr. Caswell to invoke those treaty fishing rights and avoid the application of state law.

ARGUMENT

I. The record in this case does not establish that the Mackinac Tribe is a treaty tribe or that Mr. Caswell is entitled to exercise treaty rights.

This case presents an issue of first impression in Michigan. Where case law does not exist on an issue, Michigan courts may look to authority from other jurisdictions. See *In re LFOC,* 319 Mich App 476, 483 n 1 (2017) ("Although not binding, the decisions of courts from other states may be considered as persuasive authority.") (citation omitted). The United States Court of Appeals for the Ninth Circuit has developed a framework for analyzing the issue at the heart of this case.

But rather than employ that framework, the district court in this case concluded that Mr. Caswell was exercising treaty rights based on anecdotal and irrelevant evidence. Under the district court's analysis, groups of Indians without treaty rights would be recognized as treaty tribes and exempted from state fishing laws. Simply put, that cannot be allowed because it would permit unsubstantiated claims to treaty rights to preempt valid and enforceable state law.

A. Federal recognition is not a prerequisite to treaty-tribe status.

The circuit court ruled that Mr. Caswell was not validly exercising treaty rights because the Mackinac Tribe is not federally recognized. (Appellant's App, Vol 1, 140–142.) However, other jurisdictions have rejected federal recognition as a prerequisite to treaty-tribe status.

Federal recognition is a "formal political act confirming the tribe's existence as a distinct political society and institutionalizing the government-to-government

relationship between the tribe and the federal government." *Jewell,* 829 F3d at 755, quoting *California Valley Miwok Tribe v United States,* 515 F3d 1262, 1263 (DC Cir 2008). In 1978, the United States Department of the Interior promulgated regulations establishing the procedures by which it would acknowledge that certain Indian groups exist as tribes. See 25 CFR 83.2.

> A group seeking recognition under Part 83 must submit a petition to Interior documenting certain criteria, including whether it has been identified as an American Indian entity on a 'substantially continuous basis' since 1900; whether it comprises a 'distinct community;' whether it has historically maintained 'political influence or authority over its members;' and whether its membership 'consists of individuals who descend from a historical Indian tribe.' [*Jewell,* 829 F3d at 756, citing 25 CFR 83.11(a)-(c), (e).]

Petitioners must present voluminous documentary support demonstrating the group's genealogy, ethnohistory and political life, which requires multiple experts including anthropologists, genealogists, and lawyers. *Jewell,* 829 F3d at 759–760.

The Ninth Circuit has drawn a distinction between federal recognition and the reservation of treaty rights and rejected the view that one depends on the other. "We recognize that the two inquiries are similar. Yet each determination serves a different legal purpose and has an independent legal effect." *Greene v United States,* 996 F2d 973, 976 (CA 9, 1993). "Federal recognition specifically denotes 'the federal government's decision to establish a government-to-government relationship by recognizing a group of Indians as a dependent tribe under its guardianship.'" *Mackinac Tribe v Jewell,* 87 F Supp 3d 127, 131 (DDC 2015), quoting Mark D. Myers, Federal Recognition of Indian Tribes in the United States, 12 Stan L & Pol'y Rev 271, 272 (2001). "[S]uch recognition 'is a prerequisite to the protection,

services, and benefits from the Federal Government available to Indian tribes by virtue of their status as tribes, 25 CFR § 83.2.'" *Id.*

On the other hand, "[r]ights under the treaties vested with the tribes at the time of the signing of the treaties" and can only be abrogated by Congress "and only by making absolutely clear its intention to do so." *Washington I,* 520 F2d at 692; *United States v Washington (Washington II),* 641 F2d 1368, 1371 (CA 9, 1981); see also *Menominee Tribe v United States,* 391 US 404 (1968) (holding treaty hunting rights survived despite congressional termination of all formal tribal political authority). Therefore, "[n]onrecognition of the tribe by the federal government and the failure of the Secretary of the Interior to approve a tribe's enrollment may result in loss of statutory benefits, but can have no impact on vested treaty rights." *Washington I,* 520 F2d at 692–693; accord *United States v Washington,* 593 F3d 790, 800 (CA 9, 2010) (*Washington IV*) (ruling that federal recognition was not grounds to reopen earlier denial of tribe's treaty claim).

Mr. Caswell urges this Court to adopt "the persuasive authority of the Ninth Circuit" in this regard and overrule the circuit court. (Appellant's Br, p 32.) Under the Ninth Circuit's reasoning, the circuit court's holding that Mr. Caswell could not exercise treaty rights because the Mackinac Tribe is not federally recognized was flawed. However, as explained below, the circuit court's reinstatement of the citations against Mr. Caswell was proper.

B. Mr. Caswell failed to demonstrate that the Mackinac Tribe has treaty-tribe status.

In rejecting federal recognition as the standard for treaty-tribe status, the Ninth Circuit established its own test—one that Mr. Caswell quotes but does not acknowledge he must meet. (Appellant's Br, p 28.) To have treaty-tribe status, a tribe must (1) be descended from a treaty signatory and (2) have maintained an organized tribal structure since treaty times. *Washington II,* 641 F2d at 1371. A tribe, or in this case Mr. Caswell, bears the burden of proof to establish treaty-tribe status. See *Id.* at 1374. Although the Ninth Circuit test is not identical to the standard for federal recognition, "the two inquiries are similar." *Greene,* 996 F2d at 976.

Establishing treaty-tribe status requires more than merely tracing the modern group's ancestry to the original tribe. See *United States v Suquamish Indian Tribe,* 901 F2d 772, 776 (CA 9, 1990). A tribe must have "functioned since treaty times as [a] 'continuous separate, distinct and cohesive Indian cultural or political communit[y].'" *Washington II,* 641 F2d at 1373, quoting *United States v Washington,* 476 F Supp 1101, 1105, 1106, 1107, 1109, 1110 (WD Wash 1979). "[T]he sole purpose of requiring proof of tribal status is to identify the group asserting treaty rights as the group named in the treaty. For this purpose, tribal status is preserved if some defining characteristic of the original tribe persists in an evolving tribal community." *Washington II,* 641 F2d at 1372–1373. The Ninth Circuit acknowledged that "changes in tribal policy and organization attributable to adaptation do not destroy tribal status" and that "[a] degree of assimilation is

inevitable under these circumstances and does not entail the abandonment of distinct Indian communities." *Id.* at 1373. However, "[w]hen assimilation is complete, those of the group purporting to be the tribe cannot claim tribal rights." *Id*. The inquiry considers such things as whether tribal governments have "controlled the lives of the members" or established "continuous informal cultural influence." *Id*.

In this case, the district court based its decision on only the first prong of the Ninth Circuit test, concluding that Mr. Caswell was exercising treaty rights because "the Mackinac Tribe was a signatory to those treaties." (Appellant's App, Vol 1, 133.) As demonstrated below, that ruling was erroneous because it was based on anecdotal and other inadequate evidence. But Mr. Caswell also failed to offer any evidence that the Tribe has maintained an organized tribal structure since treaty times. The district court's failure to consider that factor was fatal to its analysis.

First, Mr. Caswell offered the testimony of the Mackinac Tribe chairman (and registered agent), Barry Adams. Mr. Adams' testimony lasted only twelve minutes, including cross-examination and questions from the court (Appellant's App, Vol 1, 8–20), and offered only unsupported assertions that the Mackinac Tribe is descended from bands that signed the 1836 Treaty:

> Q All right. Is Walter Caswell a member of the Mackinac Tribe or Band of Odawa Indians?
>
> A Yes, he is.
>
> Q All right. And you refer to it as the Mackinac Tribe?
>
> A Tribe.

Q Okay.

A Really, it's a -- it's the Mackinac Tribe of Odawa and Ojibwa Indians, a/k/a the Ainse Band. Band 15 and 16, Point of St. Ignace, and the Band 16 is Pointe Aux Chenes.

Q Okay.

A Okay. And the other band -- the other reservation would be Naubinway, which was sold and to this day.

Q All right. And this is an existing tribe of American Indians?

A Right. We have a treaty signatories [sic] to the 1836 treaty, the 1855 treaty.

* * *

Q Now, the name of the tribe is the --

A Mackinac Tribe of Odawa and Ojibwa Indians, a/k/a the nanse -- Ainse Band.

Q Okay.

A Ainse Band is 15, 16. The treaty's signatories to the treaties that was made with the United States. [Appellant App, Vol 1, 12, 16.]

This testimony offers nothing more than anecdotal information. See *Timpanogos Tribe v Conway,* unpublished opinion of the United States District Court for the District of Utah, issued Jan 24, 2005 (Case No. 2:00-CV-734 TC), p 3, 2005 WL 8176199 (rejecting personal statements presenting anecdotal information in considering whether tribe was descended from treaty signatory or had merged with another tribe) (attached as Exhibit C). Mr. Adams clearly was not testifying based on personal knowledge dating to 1836. Thus, his statements were inadmissible under MRE 602. Also, he was not qualified as an expert to offer opinion testimony under MRE 702, and even if he had been, the facts underlying his

opinion were not in evidence. MRE 703. Mr. Adam also could not offer a lay witness opinion because such opinions would not have been "rationally based on [his] perception." MRE 701. Moreover, Mr. Adams' testimony is conclusory. He does not explain how he determined any of the "facts" in his testimony. This type of evidence does not prove that Mackinac Tribe members are descended from the members of a band or bands that signed the 1836 Treaty.

Second, Mr. Caswell offered copies of his tribal membership card and tribe-issued subsistence harvesting license. (Appellant's App, Vol 1, 32–33, 35–36.) Notably, Mr. Caswell's membership card states that he is a member of "The Mackinac Tribe of Odawa and Ojibwa Indians, Bands 11 thur [sic] 17 and Cheboygan Bands." (*Id.* at 35.) This contradicts Mr. Adams' testimony that the Mackinac Tribe is a successor to Ainse Bands 15 and 16 (*id.* at 12, 16) and creates confusion about which bands the Tribe claims to have succeeded politically.[3]

These documents indicate that Mr. Caswell is a member of a group that identifies itself as the Mackinac Tribe and has been granted a license to exercise certain rights claimed by that group. But they do nothing to demonstrate that the Mackinac Band is descended from a treaty signatory or has treaty rights that its members may exercise. Those facts are assumed by the issuance of the cards, not

[3] Chingassamo signed the 1836 Treaty on behalf of the L'Arbre Croche bands, but he signed the supplemental article to that treaty on behalf of the "Cheboigan" bands. 1836 Treaty, signature pages. The notation on Mr. Caswell's membership card suggests the Mackinac Tribe may also claim to be a successor to the "Cheboigan" bands, which has a separate group of Indians seeking tribal recognition from the United States. See generally *Burt Lake Band of Ottawa & Chippewa Indians v Zinke,* 304 F Supp 3d 70 (DDC 2018).

proven by their issuance. Also, the documents were issued in modern times. They are not historical evidence and do not provide an unbroken historical chain tying the Mackinac Tribe to the bands that signed the 1836 Treaty. If the issuance of tribal membership cards and licenses were sufficient to demonstrate treaty-tribe status, then any group of Indians could avoid state law by issuing similar documents.

Third, Mr. Caswell presented some evidence of tribal members' ancestry, but insufficient evidence to support the conclusion that members are descended from a treaty signatory. For example, Mr. Caswell presented a certificate of degree of Indian blood issued to him by the United States Department of the Interior, Bureau of Indian Affairs. (Appellant's App, Vol 1, 34.) The certificate states that Mr. Caswell is "1/64 Mackinac Band Chippewa Indian" and that his maternal great-great-great-grandmother appeared on the 1836 Census Register of the Ottawa and Chippewa Indians. (*Id.*) In addition, Mr. Adams testified that his grandfather and uncle signed a later treaty on behalf of the Mackinac Tribe's predecessors. (*Id.* at 15.) But evidence that one or two members are descended from an 1836 Treaty signatory band does not establish that *this group of Indians* that calls themselves the Mackinac Tribe is descended from a treaty signatory.

Further, treaty rights are held by the tribe, not individual members. "Tribal rights in property, including hunting and fishing rights, are owned by the tribal entirety and not as a tenancy in common of the individual members. The individual enjoys a right of user derived from the legal or equitable property right of the tribe

of which he is a member." *Attorney Gen v Hermes,* 127 Mich App 777, 782 (1983) (internal citations omitted). Therefore, Mr. Caswell and Mr. Adams are not entitled to exercise treaty rights unless their tribe has treaty rights. Their Indian heritage alone does not bestow treaty rights on them. *Id.* at 783 ("a right of user arises by virtue of enrollment in the tribe, and does not inhere in the individual by virtue of his blood").

Mr. Adams also testified that a genealogy group researched the Mackinac Tribe's records and assists with issuing licenses to tribal members. (Appellant's App, Vol 1, 13, 19–20.) But no testimony or documents were offered regarding what the research or records demonstrated about tribal members' ancestry or even what ancestry was required for membership in the Mackinac Tribe. So this testimony does not help support Mr. Caswell's position.

Finally, Mr. Caswell did not assert, much less attempt to demonstrate, that the Mackinac Tribe had maintained an organized tribal structure since treaty times. Mr. Caswell's tribal membership card and tribe-issued subsistence harvesting license, which is conditioned on rules and regulations issued by the Tribe (Appellant's App, Vol 1, 18), demonstrate that the Mackinac Tribe purports to exercise some degree of governmental power over its members today. But that evidence does not show "control[of] the lives of the members" or that the tribe has exercised governmental power consistently since treaty times. *Washington II,* 641 F2d at 1373. Nor was any evidence presented of the Mackinac Tribe's cultural

influence, much less "continuous informal cultural influence" since treaty times. *Id.* at 1373–1374.

In fact, the evidence presented about the Mackinac Tribe's history contradicted the idea that the Tribe had functioned continuously since treaty times. Mr. Adams, the Mackinac Tribe chairman, testified that his group was formed by people who were unable to enroll in the Sault Tribe:

> Q Is the band federally recognized?
>
> A No.
>
> Q Okay.
>
> A But there is questions to -- what I'm saying is if you take -- when the Sault Tribe became federally recognized, okay, it wasn't the Sault Tribe. It was the Bahweting Ojibwa Mackinac Tribe. Okay?
>
> Q Um-hum.
>
> A They are the ones that got them -- the Sault Tribe changed the name of the corporation twice to a third name. Okay. The Bahweting Ojibwa got threw aside. Okay. In 1998 the land's going away. Okay.
>
> The Mackinac Tribe of Odawa got 14.7 million.
>
> The Sault Tribe got 5.2 million, and this is all fully rec -- I mean, documented. You know.
>
> Q Now --
>
> A *And so what the Sault Tribe did is they closed the rolls after so many Mackinac people was in there, and the people that I have as enrollment with the Mackinac Tribe is the Mackinac people that the Sault Tribe closed the rolls and wouldn't let those people in. That's -- that is us. That is us.* If we weren't fed -- basically federally recognized, how could we sign a treaty? [Appellant's App, Vol 1, 16–17 (emphasis added).]

That the Mackinac Tribe was formed by individuals who were unable to enroll with the Sault Tribe[4] undercuts the idea that the Mackinac Tribe has maintained an organized tribal structure since the 1830s.

In summary, the district court did not apply any meaningful standard in determining whether the Mackinac Tribe was a political successor to a treaty signatory, and it erred in concluding from the evidence before it that "the Mackinac Tribe was a signatory to those treaties." (Appellant's App, Vol 1, 133.) Even if the evidence was "not disputed" as the district court noted (*id.*), the evidence was inadequate for Mr. Caswell to meet his burden of proof. The Ninth Circuit has wisely concluded that a significant showing is needed to establish federal treaty rights and deprive a state of jurisdiction over the taking of fish within its borders. This Court should follow suit. The circuit court's reinstatement of the citations against Mr. Caswell should be affirmed.

CONCLUSION AND RELIEF REQUESTED

Mr. Caswell did not establish that the Mackinac Tribe is a political successor to a signatory of the 1836 Treaty or that he is entitled to exercise fishing rights

[4] In an appeal to the Interior Board of Indian Appeals brought by Mr. Adams, the board noted, "Appellants apparently are members of the Sault Ste. Marie Tribe, but contend that the rules and regulations of the Sault Ste. Marie Tribe deny them eligibility to exercise treaty fishing rights, notwithstanding their membership." *Adams v Acting Midwest Regional Director, Bureau of Indian Affairs,* 50 IBIA 354, 357 n 5 (Nov 30, 2009) (attached to Appellee's Br as Ex 2). If some Mackinac Tribe members are also Sault Tribe members, this would further undermine the idea that the Mackinac Tribe has functioned as an independent government since treaty times.

under that treaty as a tribal member. The 1836 Treaty did not prevent state law from applying to him. The district court erred in ruling otherwise. The circuit court's reinstatement of the citations against Mr. Caswell should be affirmed.

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