Appeal Nos. 20-35346, 20-35353

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SNOQUALMIE INDIAN TRIBE, a federally recognized Indian tribe on its own behalf and as *parens patriae* on behalf of its members,

Plaintiff-Appellant,

SAMISH INDIAN NATION,

Intervenor-Appellant,

v.

STATE OF WASHINGTON; and GOVERNOR JAY INSLEE and WASHINGTON DEPARTMENT OF FISH AND WILDLIFE DIRECTOR KELLY SUSEWIND, in their official capacities,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA
The Honorable Ronald B. Leighton, United States District Court Judge
Case No. 3:19-cv-06227-RBL

TREATY TRIBES' *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLEE AND AFFIRMANCE

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I. INTRODUCTION

The *Amici Curiae* Tribes in this case, the Jamestown S'Klallam, Lummi Nation, Nisqually Indian Tribe, Port Gamble S'Klallam Tribe, Puyallup Tribe of Indians, Suquamish Tribe, and Swinomish Indian Tribal Community, participate for the purpose of requesting the decision below be affirmed.

Here, the Snoqualmie Indian Tribe (Snoqualmie) sought a declaration as to its status as a treaty tribe under the Treaty with the Duwamish, Suquamish, et al. (Treaty of Point Elliott), 12 Stat. 927 (Jan. 22, 1855), a declaration that it is entitled to exercise hunting rights under the Treaty, and a declaration that its treaty rights have not been abrogated by Congress. ER 746-760 (Snoqualmie Motion for Partial Summary Judgement). The district court dismissed the case, finding that a prior final judgment concluding that Snoqualmie is not a political successor in interest to any of the Treaty of Point Elliott signatories collaterally estopped Snoqualmie from relitigating its claim to treaty tribe status. ER 7-10, 13 (Order Granting Defendant State of Washington's Motion to Dismiss and Denying Pending Motions as Moot, 6-9, 12).

The district court properly found that the claim and issues that Snoqualmie seeks to relitigate are barred by preclusion principles and finality concerns. Forty years ago in the *United States v. Washington* treaty fishing litigation, the district court found that Snoqualmie and four other proposed intervenors, including the

Samish Indian Nation (Samish), were not "political continuation[s] of or political successor[s] in interest to any of the tribes and bands of Indians with whom the United States treated in the treaties of Medicine Creek [10 Stat. 1132] and Point Elliott." *United States v. Washington*, 476 F. Supp. 1101, 1104 (W.D. Wash. 1979) (*Washington I*). On appeal, this Court applied close scrutiny to the district court's factual findings and legal conclusions and affirmed, holding that Snoqualmie, Samish, and the other intervenors are not treaty tribes and cannot exercise treaty rights. *United States v. Washington*, 641 F.2d. 1368 (9th Cir. 1981) (*Washington II*), *cert. denied sub nom.*, 454 U.S. 1143 (1982).

This appeal is framed by Snoqualmie and Samish, and to an extent by *amicus curiae* Sauk-Suiattle Indian Tribe, as a treaty rights abrogation case. But it is not a treaty rights abrogation case. Because Snoqualmie and Samish previously litigated their treaty tribe status and were finally adjudicated not to be successors in interest to any tribal entity that participated in the treaties, they have never held any treaty rights at all, let alone treaty rights which were somehow improperly abrogated by the State or the district court.

Instead, this case is Snoqualmie's and Samish's attempt to have yet another bite at the treaty rights apple by stretching and ignoring binding prior judgments against them and other settled law, including this Court's unanimous *en banc* panel decision in *United States v. Washington*, 593 F. 3d 790 (9th Cir. 2010) (*en banc*)

(*Washington IV)*.[1] There, this Court held that Samish, and by extension the other proposed intervenors including Snoqualmie, may not relitigate their treaty tribe status.

Because allowing Snoqualmie and Samish to relitigate claims and issues long ago decided would violate preclusion and finality principles, harm the Treaty Tribes' established treaty fisheries and treaty hunts, and upset settled expectations in an arena in which finality concerns loom large, this Court should affirm the district court's order of dismissal.

II. IDENTITY AND INTERESTS OF *AMICI CURIAE* TREATY TRIBES

Amici curiae Treaty Tribes are federally-recognized Indian Tribes, each of which is a signatory to, or a successor in interest to one or more of the tribes and bands that were signatory to, the Treaty of Point Elliott, 12 Stat. 927 (1855), the Treaty of Point No Point, 12 Stat. 933 (1855), or the Treaty of Medicine Creek, 10 Stat. 1132 (1854) and have been adjudicated to be treaty tribes entitled to all the rights and privileges reserved by the treaty. *United States v. Washington*, 459 F.

[1] Samish was not a party to Snoqualmie's case at the district court, opting instead to file an amicus brief which was denied as moot, and then filed a motion to intervene for the purpose of filing an appeal claiming Article III standing because the district court interpreted *Washington IV* and therefore the ruling impacted Samish. The motion was granted by Judge Leighton. ER 17-19 (Order on Samish Indian Nation's Motion for Leave to Intervene for the Limited Purpose of Appeal).

Supp. 1020, 1039 (1978) (Swinomish); *id*. at 1040 (Suquamish); *id*. at 1041 (Port Gamble S'Klallam); *United States v. Washington*, 626 F. Supp. 1405, 1432-34 (Jamestown S'Klallam), 1442 (Corrected Order Port Gamble S'Klallam), 1486 (Jamestown S'Klallam); *United States v. Washington*, 384 F. Supp. 312, 360-63 (Lummi); 367-68 (Nisqually); 370-71 (Puyallup).

As particularly relevant here, separate *amicus curiae* the Tulalip Tribes has been adjudicated to be the successor in interest to the treaty Snoqualmie, *United States v. Washington*, 626 F. Supp. 1405, 1527 (W. D. Wash. 1979); *United States v. Washington*, 459 F. Supp. 1020, 1039 (W. D. Wash. 1978), and *amici curiae* Lummi and Swinomish have been adjudicated the successors in interest to the treaty Samish. *United States v. Washington*, 394 F. 3d 1152, 1159-1160 (9th Cir. 2005). If Snoqualmie or Samish were to relitigate their claims to successorship to the treaty Snoqualmie or treaty Samish, Tulalip's, Lummi's and Swinomish's sovereign interests and identity would be impaired.

Additionally, finality in decisions regarding the treaty status of tribes is important because of resource management regimes. Nine tribes hold reserved hunting rights under the Treaty of Point Elliott and under current management regimes there is not enough game for those nine tribes to harvest. *See generally*, 2018 Big Game Harvest Report Western Washington Treaty Tribes, Northwest

Indian Fisheries Commission.[2] Treaty resources are finite and any share Snoqualmie or Samish claims would result in a dilution in shares of total harvest by the treaty tribes, harming their ability to put food on the table and earn a living from their treaty activities. *See Makah Indian Tribe v. Verity*, 910 F.2d 555, 559 (9th Cir. 1990) (noting any increase to the Makah Tribe's fishing quota would diminish the harvest of other tribes sharing the same resource).

III. PARTIES' CONSENT TO FILING

Snoqualmie, Samish, and the State of Washington defendants have each stated that they do not object to the filing of this amicus brief. No party's counsel authored any portion of this brief. No party, party's counsel, or any other person or entity besides the Jamestown S'Klallam, Lummi, Nisqually, Port Gamble S'Klallam, Puyallup, Suquamish, and Swinomish Tribes contributed money to fund preparation or submission of this brief.

IV. STATEMENT OF FACTS

Following several years of fishing disputes between Puget Sound tribes, tribal members, and the State of Washington over Indian fishing in the Puget Sound Region, the United States brought the case known as *United States v. Washington*,

[2] https://nwifc.org/publications/big-game-harvest-reports/.

asking the Western District of Washington to declare that the Stevens Treaties guaranteed to the signatory tribes the right to fish and to define the scope of that right. *United States v. Washington* 384 F. Supp. 312 (W.D. Wash. 1974).

Snoqualmie and Samish moved to intervene in *United States v. Washington* seeking a determination of their treaty tribe status under the Treaty of Point Elliott and of their right to participate in treaty fishing activities.[3] Judge Boldt found that Samish and Snoqualmie were not treaty tribes based on a finding that they were not "entit[ies] that [are] descended from any of the tribal entities that were signatory to the Treaty of Point Elliott." *Washington I*, 476 F. Supp. at 1106 (Samish), 1109 (Snoqualmie). In particular, the court found that the Samish and Snoqualmie had failed to satisfy their evidentiary burden on the most critical requirement for treaty tribe status—maintenance of an organized tribal political structure from treaty time forward. *Id*. The court made its conclusions explicitly, stating that Samish, Snoqualmie, and the other proposed intervenors "ha[d] not maintained an organized tribal structure in a political sense." *Id.* at 1109.

[3] Contrary to its positions here, in a memorandum to the Court, the Snoqualmie plainly stated what it litigated before Judge Boldt: "It is the contention of [Snoqualmie] that upon a proper showing that **[it is] the successor[] in interest to signatories to the Treaty of Point Elliott**." State- ER 065 (*United States v. Washington*, Dkt. #898 at 1 (Dec. 4, 1974) (emphasis added)). Moreover, Snoqualmie acknowledged that the "right to fish is one which derives from the Treaty alone and is in no way connected or dependent upon 'federal recognition.'" *Id*.

On appeal, this Court affirmed the district court's findings and conclusion that Samish, Snoqualmie, and the other proposed intervenors were not treaty tribes. *Washington II*, 641 F.2d at 1373. In *Washington II*, the Court explained that the issue on appeal was Samish, Snoqualmie, and the three other proposed intervenors' claims to treaty tribe status and their ability to "exercise treaty rights as tribes." *Id.* at 1372. After close scrutiny, this Court rejected these claims, noting that the only tribes that may exercise treaty rights "are the tribes that signed the treaties." *Id.* Reiterating a prior decision, the Court held that there is a "single necessary and sufficient condition for the exercise of treaty rights by a group of Indians descended from a treaty signatory: the group must have maintained an organized tribal structure." *Id.* (citing *United States v. Washington*, 520 F.2d 676, 693 (9th Cir. 1975)). Because Samish and Snoqualmie had failed to produce sufficient evidence that they had maintained "an organized tribal structure" since the signing of the treaties, they were not treaty tribes. *Id*. at 1374. That decision carries the same force today.

V. ARGUMENT

A. Samish and Snoqualmie's attempt to relitigate their treaty tribe status based on subsequent recognition is foreclosed by Ninth Circuit precedent.

Despite the Ninth Circuit's binding judgment that they are not treaty tribes, Samish and Snoqualmie have now come back to this Court in an attempt to relitigate

their treaty tribe status, based not on the fishing clause but on the hunting and gathering clause of the Treaty of Point Elliott. However, the specific clause Samish and Snoqualmie are now using to claim treaty rights has no impact on the Ninth Circuit's unequivocal decision: Samish and Snoqualmie are not treaty tribes and therefore are not entitled to "exercise treaty rights[.]" *Washington II*, 641 F.2d at 1372, 1374. So while the Ninth Circuit's determination in *Washington II* was made in the context of Samish and Snoqualmie's desire to engage in the treaty fishery, that determination regarding treaty right status was not limited to treaty fishing rights.

For treaty tribe status of a particular treaty (*e.g.*, the Treaty of Point Elliott) to be subject to change over time or inconsistent determinations regarding which tribes are the successors to the right in the treaties, is not logical. To put it another way, for some tribes to be party to the Treaty of Point Elliot for some purposes but not others, is both illogical and inconsistent with the textual structure of the treaties. The treaty-fishing clause and the treaty-hunting clause appear in the same sentence of the same article of all the Stevens Treaties, which in Article 5 of the Treaty of Point Elliott reads as follows:

> The **right of taking fish at all usual and accustomed grounds and stations** is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, **together with the privilege of hunting and gathering roots and berries on open and unclaimed lands**. Provided, however, that they shall not take shell-fish from any beds staked and cultivated by citizens.

12 Stat. 927, Art. 5 (emphasis added).

As with a contract, the tribal entities that signed the treaties, signed the entire treaty and are therefore entitled to exercise all of the rights reserved by the treaty and receive all the benefits granted by the treaty. Indian treaties "are to be construed, so far as possible, in the sense in which the Indians understood them, and 'in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people.'" *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 432 (1943) (citing *Tulee* v. *Washington*, 315 U.S. 681, 684-85 (1942)). Samish and Snoqualmie's argument here that this case may proceed because the hunting right is at issue rather than the fishing right ignores this Court's judgment and factual findings as to which tribes are the treaty tribes who signed the Treaty of Point Elliott and therefore are entitled to exercise treaty rights.

A final judgment and factual finding as to treaty tribe status holds as true for hunting as it does for fishing, or any of the other rights listed in the many other clauses that appear in the treaties. As the district court in this case explained, the "type of rights sought is a distinction without a difference" given this Court's prior binding judgment in *Washington II*:

> [T]he Ninth Circuit's decision affirming [*Washington I*] was a final judgment on the merits. This is no less true simply because the judgment concerned fishing rights. Issue preclusion only requires that the issue decided was essential to a final judgment about *something*; the relevant issue may be broader than the claim that was adjudicated. *See*

> *Sturgell*, 553 U.S. at 892. Otherwise, issue and claim preclusion would be the same.
>
> …
>
> [T]he factual issue that determined [Snoqualmie's and the other intervenors'] fishing rights in *Washington II* is the same gateway question that the Court would face here when determining hunting and gathering rights under the Treaty of Point Elliott. The type of rights sought is a distinction without a difference. The Ninth Circuit's decision affirming *Washington II* unequivocally addressed the "single condition" necessary for determining whether a "group asserting treaty rights [is the same] as the group named in the treaty[:]" maintenance of an organized tribal structure. 641 F.3d at 1372. The Snoqualmie do not explain how the factual issues necessary to determine signatory status with respect to fishing rights could differ from those required to determine hunting and gathering rights, all of which are described in the same article of the Treaty. This is because they do not differ; as the Ninth Circuit recognized, both issues hinge on the same question of identity between the original signatories and the present-day tribe. *See id*. at 1372.

ER 9 (Order Granting Defendant State of Washington's Motion to Dismiss Pending Motions as Moot, 8).

Put simply, a final adjudication that a tribe is not a treaty tribe bars that tribe from collaterally attacking prior final judgments and reviving its failed attempt to gain treaty tribe status by playing semantic games with its causes of action.

Nevertheless, in an effort to avoid the preclusive effects of an adverse prior judgment and underlying factual findings on its treaty tribe status, Samish and Snoqualmie argue that their subsequent federal recognition justifies relitigating their treaty tribe status. Both Tribes rely heavily on this Court's *en banc* panel decision in

Washington IV, where Samish attempted to relitigate this Court's prior binding judgment in *Washington II* that Samish was not a treaty tribe by relying on its subsequent grant of federal recognition. The *en banc* panel rejected this attempt, holding that "**recognition proceedings** and the fact of recognition **have no effect on the establishment of treaty rights** at issue in this case." *Washington IV*, 593 F.3d at 793 (emphasis added); *see also id.* at 800 ("[T]reaty adjudications have no estoppel effect on recognition proceedings, and recognition has no preclusive effect on treaty rights litigation. Indeed … the fact of recognition cannot be given even presumptive weight in subsequent treaty litigation.").

Despite the clarity of the Ninth Circuit's *en banc* decision that Samish and the other proposed intervenors, including Snoqualmie, are not treaty tribes entitled to exercise treaty rights and that the tribes cannot relitigate that determination, both tribes now engage in a fanciful – and strained – interpretation of the Court's decision so they can attempt to relitigate their treaty tribe status under the Treaty's hunting clause. To support this argument, both tribes rely on the statement in *Washington IV* that "[n]othing we have said precludes a newly recognized tribe from attempting to intervene in *United States v. Washington* or other treaty right litigation to present a claim of treaty rights not yet adjudicated. Such a tribe will have to proceed, however, by introducing its factual evidence anew; it cannot rely on a preclusive effect arising from the mere fact of recognition." 593 F. 3d at 800.

Snoqualmie mistakenly interprets this statement as this Court articulating a new rule for establishing treaty tribe status: "(1) a 'newly recognized tribe,' (2) may present a claim of 'treaty rights not yet adjudicated,' (3) and will be required to introduce factual evidence 'anew.'" Dkt. 12, Snoqualmie Opening Brief at 20. The problem for Samish and Snoqualmie, however, is that this Court said no such thing. To the contrary, this Court reaffirmed its longstanding test for treaty tribe status, maintenance of an organized tribal structure from treaty time forward, and concluded that Samish could not relitigate that issue anew: "[t]he Samish Tribe has a factual determination finally adjudicated against it in *Washington II*. The fact that a subsequent administrative ruling [in Samish's recognition proceedings] may have made underlying inconsistent findings is no reason for undoing the finality of the *Washington II* factual determinations." *Washington IV*, 593 F. 3d at 800. The same is true of Snoqualmie here, and the district court did not err in following *Washington IV* and so holding.

Snoqualmie willfully misreads and ignores critical distinctions of the *en banc* decision regarding the preclusive effect of treaty rights determinations on recognition determinations, and vice versa. The *en banc* decision was clear that treaty rights determinations and recognition proceedings are "fundamentally different" from each other and that the ruling in *Greene v. Babbitt*, 64 F.3d 1266, 1270 (9th Cir.1994) "was part of a two-way street: treaty adjudications have no

estoppel effect on recognition proceedings, and recognition has no preclusive effect on treaty rights litigation." 593 F.3d at 800. For example, a tribe may be an unrecognized tribe entitled to exercise treaty rights or a federally-recognized tribe not entitled to exercise treaty rights. What matters here is that *treaty rights determinations* do have a preclusive effect on subsequent *treaty rights litigation* even if a tribe has gained subsequent recognition, as the *en banc* panel in *Washington IV* plainly held.

Snoqualmie then claims that the *en banc* panel's "new rule" provides that "a newly recognized" tribe may meet the requirements of the rule "whether or not that tribe has previously been the subject of a treaty rights decision." Dkt. 12, Snoqualmie Opening Brief at 20-21. Snoqualmie has completely misconstrued what the *en banc* panel said: "[t]here are good reasons for adhering to the rule that treaty tribes are not entitled to intervene in recognition decisions to protect against possible future assertions of treaty rights by the newly recognized tribe, whether or not that tribe has previously been the subject of a treaty rights decision." *Washington IV*, 593 F.3d at 790. Contrary to Snoqualmie's suggestion, this does not mean that tribes may relitigate their treaty tribe status again and again; it means that this Court was simply foreclosing intervention by treaty tribes in federal recognition cases, whether or not

the tribe seeking federal recognition was previously subject to a treaty rights decision, because the inquiries are fundamentally different.[4]

When read in context, the only fair reading of the sentence from *Washington IV* upon which Samish and Snoqualmie rely is that a newly recognized tribe may present a claim for treaty rights, assuming they are not precluded by a previous adverse treaty rights decision, but cannot rely on the factual record in the federal recognition decision to prove their treaty status and instead must make a new factual record. Thus, the *en banc* decision does not provide an avenue for Samish and Snoqualmie to relitigate their treaty tribe status, even if the treaty rights claim relates to something other than fishing. Both tribes were afforded a full and fair opportunity to litigate their treaty status and that litigation resulted in a binding adjudication that Samish and Snoqualmie are not treaty tribes under the Treaty of Point Elliott and are not entitled to exercise treaty rights, be they fishing rights or hunting rights.

[4] In effect, Snoqualmie reads the *en banc* panel's decision to have granted Samish's Rule 60(b) motion in part, relieving it from the successorship ruling insofar as it was not asserting a claim to treaty fishing rights. The decision, however, is clear on this point: it affirmed the "judgment of the district court denying the Rule 60(b) motion of the Samish Tribe for relief from the judgment in *Washington II*"; it did not affirm in part and reverse in part the denial of the Samish Tribe's motion. *Washington IV*, 593 F.3d at 801.

B. Snoqualmie and Samish had a full and fair opportunity to present their treaty right status.

Both Samish and Snoqualmie, in previous cases and in the present case, have argued that the administrative determinations underlying their recognition decision would provide the "necessary political continuity link" to establish treaty tribe status. This Court in *Washington IV* however, rejected this argument, reasoning that the critical finding justifying the denial of treaty rights was Judge Boldt's finding that Samish, Snoqualmie, and the other proposed intervenors had not "functioned since treaty times as continuous separate, distinct and cohesive cultural or political communit[ies]." *Washington IV*, 593 F.3d at 799 (quoting *Washington II*, 641 F.2d at 1373) (internal quotations omitted). This Court further found that the proceedings in the trial court had been extensive, and that after close scrutiny this Court concluded that the evidence supported the district court's finding that Samish and Snoqualmie had failed to maintain a distinct or cohesive cultural or political community since the signing of the treaty.

The *Washington IV* Court also rejected Samish's argument that it was entitled to relitigate its treaty status "on the ground that an administrative body [had] come to a conclusion inconsistent with the factual finding finally adjudicated by [the Ninth Circuit]," because there was "no authority upholding relief from judgment under Rule 60(b) on such a ground." *Washington IV*, 593 F.3d at 799. That precedent is

another independent bar to the claims advanced by Snoqualmie and Samish in this litigation.

The Ninth Circuit also stated in *Washington IV* that it found no reason "why the Samish Tribe lacked incentive to present in [*United States v. Washington*] all of its evidence supporting its right to successor treaty status." *Id.* The same is true for Snoqualmie, which claims that it was "not … able to assert treaty status in court" while it was unrecognized and that it had few resources to do so. ER 756 (Snoqualmie Indian Tribe's Motion for Partial Summary Judgment, 11). But Snoqualmie did exactly that in the lengthy proceedings described above. In fact, Snoqualmie had a full and fair opportunity to litigate its status as a treaty tribe, it did so, and it failed to prove its claim. The fact that Samish and Snoqualmie disagree with a prior final judgment of this Court does not mean that they did not have an adequate opportunity to litigate their claims or that they should be allowed to relitigate their claims again now.[5]

The Claims Court rejected a similar argument when it was advanced by Samish. In *Samish Indian Nation v. United States*, 58 Fed. Cl. 114, 120-22 (2003),

[5] This argument is also belied by the fact that most, if not all, of the treaty tribes lacked significant resources at the time of the *United States v. Washington* decision, and the fact that two of the original tribal plaintiffs (Stillaguamish and Upper Skagit) were unrecognized at the time and nevertheless successfully proved their treaty tribe status. *United States v. Washington*, 384 F. Supp. 312, 379 (W.D. Wash. 1974).

aff'd in part and rev'd and remanded in part on other grounds, 419 F.3d 1355 (Fed. Cir. 2005), the court held Samish was collaterally estopped from claiming treaty tribe status because the identical issue was adjudicated in *Washington II*, where it was actually litigated and necessary to the judgment and in which Samish was fully represented.[6]

C. Even if the case could proceed, the claims and issues Samish and Snoqualmie seek to relitigate are barred by preclusion principles and finality concerns.

As noted above, Samish and Snoqualmie argue that their treaty rights have been improperly abrogated. But abrogation is not an issue here. Samish and Snoqualmie are not treaty tribes and never had treaty rights for Congress or the District Court to abrogate.

Even though the Samish and Snoqualmie litigated their treaty tribe status in the context of *United States v. Washington*, a case involving treaty fishing rights, the treaty status of Samish and Snoqualmie is settled. A determination of a tribe's

[6] The court's collateral estoppel ruling was not reversed on appeal. Samish made five claims in the case, two of which (claims three and four) were based on the treaty and were dismissed on collateral estoppel (as well as statute of limitations) grounds. 58 Fed. Cl. at 120-22. Samish did not appeal the dismissal of those claims. *See Samish Indian Nation v. United States*, 82 Fed. Cl. 54, 56 (2008) (explaining that Samish only appealed the dismissal of claims one, two and five), *aff'd in part and rev'd in part*, 657 F.3d 1330 (Fed. Cir. 2011), *cert. granted and judgment vacated in part*, *United States v. Samish Indian Nation*, 568 U.S. 936 (2012). Accordingly, the Federal Circuit had no occasion to address and did not disturb the Claims Court's collateral estoppel ruling with respect to claims three and four. *See Samish Indian Nation*, 419 F.3d 1355.

treaty status in the context of the fishing right holds true for treaty hunting for the reasons explained above. Both tribes are collaterally estopped from relitigating their treaty tribe status even if the current litigation concerns hunting rights instead of fishing rights. Collateral estoppel "precludes relitigation of issues actually litigated and necessary to the outcome of [a prior] action." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979) n.5; *Levi Strauss & Co. v. Blue Bell*, 778 F.2d 1352, 1357 (9th Cir. 1985). The issue of whether or not Samish and Snoqualmie were treaty successors and entitled to exercise treaty rights has been litigated.

Furthermore, Samish and Snoqualmie's position promotes the absurd result that every tribe would have to litigate every aspect and clause of the treaty and that a particular treaty could have a group of tribes who could exercise fishing rights, and a different group of tribes who could exercise hunting rights, under the very same treaty. This would result in the courts having to determine piecemeal which rights a tribe is entitled to under each treaty, and which have a say in fisheries matters versus hunting matters. Such a result is implausible and illogical. Either a tribe is a party to a treaty and all of its provisions, or it is not. Neither Samish nor Snoqualmie cite any authority for the novel proposition that tribes can be parties to a treaty for some purposes, but not others. A treaty is a contract between nations, and the decision regarding which tribes signed the contract is binding and conclusive, regardless of *which terms* of that contract are in dispute.

The tribes that have been determined by the district court and affirmed by this Court to be treaty tribes in *United States v. Washington* under the Treaty of Point Elliott have fully exercised the full scope of their treaty rights without the need for subsequent litigation. Those who were determined not to be treaty tribes have a determination that is no less final. If accepted, Samish and Snoqualmie's arguments here would open the door to endless relitigation of treaty tribe status every time an enterprising tribe or its counsel identifies a new potential cause of action under the treaty. This would be unmanageable, an unreasonable burden on the parties and the judiciary, and would likely lead to inconsistent obligations and decisions. Worse, it undermines long-settled obligations and expectations of the parties who were adjudicated to be treaty tribes under the treaty at issue. This Court should not open that door.

VI. CONCLUSION

Amici curiae Treaty Tribes respectfully request that the Court affirm the District Court's decision.

Dated this 25th day of September 2020.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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I hereby certify that on the 25th day of September 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties that are registered with CM/ECF system.

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