Nos. 19-2070 and 19-2107

United States Court of Appeals
for the Sixth Circuit

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS,

Plaintiff – Appellant Cross-Appellee,

v.

GRETCHEN WHITMER, Governor of the State of Michigan,

Defendant – Appellee,

CITY OF PETOSKEY, MI; CITY OF HARBOR SPRINGS, MI; EMMET COUNTY, MI; CHARLEVOIX COUNTY, MI,

Intervenors – Appellees Cross-Appellants,

TOWNSHIP OF BEAR CREEK; TOWNSHIP OF BLISS; TOWNSHIP OF CENTER; TOWNSHIP OF CROSS VILLAGE; TOWNSHIP OF FRIENDSHIP; TOWNSHIP OF LITTLE TRAVERSE; TOWNSHIP OF PLEASANTVIEW; TOWNSHIP OF READMOND; TOWNSHIP OF RESORT; TOWNSHIP OF WEST TRAVERSE; EMMET COUNTY LAKE SHORE ASSOCIATION; THE PROTECTION OF RIGHTS ALLIANCE; CITY OF CHARLEVOIX, MI; TOWNSHIP OF CHARLEVOIX,

Intervenors – Appellees.

On Appeal from the United States District Court for the Western District of Michigan
The Honorable Paul L. Maloney

PETITION FOR REHEARING EN BANC
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

James A. Bransky
General Counsel
LITTLE TRAVERSE BAY BANDS
OF ODAWA INDIANS
9393 Lake Leelanau Drive
Traverse City, Michigan 49684
(231) 946-5241
jbransky@chartermi.net

Riyaz A. Kanji
David A. Giampetroni
KANJI & KATZEN, P.L.L.C.
303 Detroit Street, Suite 400
Ann Arbor, Michigan 48104
(734) 769-5400
rkanji@kanjikatzen.com

Donna L. Budnick
Legislative Services Attorney
LITTLE TRAVERSE BAY BANDS
OF ODAWA INDIANS
7500 Odawa Circle
Harbor Springs, Michigan 49740
(231) 242-1424
dbudnick@ltbbodawa-nsn.gov

Ian Heath Gershengorn
Zachary C. Schauf
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
igershengorn@jenner.com

Counsel for Plaintiff – Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Treaties and Statutes

Other Authorities

RULE 35(b) STATEMENT AND INTRODUCTION

This case concerns an exceptionally important inter-sovereign dispute. The parties—on one side, Michigan and its subdivisions, and on the other, the Little Traverse Bay Bands of Odawa Indians ("LTBB")—dispute whether the 1855 Treaty of Detroit, 11 Stat. 621, RE558-06, created a reservation for LTBB's predecessors. That controversy does not affect land title but has significant implications for the allocation of governmental authority. As the panel recognized, this case presents "important questions of federal Indian law." *Little Traverse Bay Bands of Odawa Indians v. Whitmer*, Nos. 19-2070/2107, Slip Op. at 23 (6th Cir. May 18, 2021). But in resolving them, the panel contradicted decisions of the Supreme Court, this Court, and the Tenth Circuit, threatening doctrinal confusion for decades to come. En banc review is warranted.

The panel should have hewed to treaty and statutory text. The 1855 Treaty describes the lands in question as "the aforesaid reservations" that the government had "reserved herein for the band[s]." RE558-06, PageID##6894–6895. In 1872 and 1875, Congress identified the same lands as a "reservation," Act of June 10, 1872, § 1, 17 Stat. 381, 381, that had been "reserved for Indian purposes," Act of Mar. 3, 1875, § 3, 18 Stat. 516, 516. Prior to this litigation, no court had ever found that a treaty using the term "reservation" to describe lands set aside for a tribe did not create one. And that result is more untenable after *McGirt v.*

Oklahoma, 140 S. Ct. 2452 (2020), which warned against counter-textual arguments not "permitted in any other area of statutory interpretation" and which emphasized that to create a reservation, "[i]t is enough" that Congress identified a "defined tract appropriated to [Indian] purposes." *Id.* at 2474–75 (quotation marks omitted).

The panel, however, found that no reservation had been established for LTBB by doing precisely what *McGirt* condemned: "substituting stories for statutes." *Id.* at 2470. It did not acknowledge the Treaty text identifying LTBB's lands as "reserved" and as a "reservation[]," even though, as with statutory construction, "[t]reaty analysis begins with the text," *Herrera v. Wyoming*, 139 S. Ct. 1686, 1701 (2019). As best as LTBB can tell, the omission stemmed from the panel's suggestion that the word "reservation" lacked definitive meaning in the 1850s and that the parties might instead have used the term "in common parlance" (though what that parlance was we never learn), Slip Op. at 19. But as in *McGirt*, the evidence does not "tell[] the story we are promised," *McGirt*, 140 S. Ct. at 2470. The 1855 Treaty was negotiated by Commissioner of Indian Affairs George Manypenny, who—as this Court detailed in *Keweenaw Bay Indian Community v. Naftaly*, 452 F.3d 514, 518–19 (6th Cir. 2006)—was the architect of the federal reservation policy in the 1850s. And if the panel was correct that Manypenny nevertheless was unclear in his use of "reservation," it was obliged under

longstanding Supreme Court and Sixth Circuit precedent to resolve the ambiguity in LTBB's favor.

The panel supplied two additional reasons for ignoring text, each also contrary to settled law. First, the Treaty provided for allotment of lands within the tribal tracts to individual members, which the panel viewed as incompatible with reservation status. The Supreme Court, however, has repeatedly emphasized that "allotment … is completely consistent with continued reservation status," *McGirt*, 140 S. Ct. at 2464 (quotation marks and citation omitted). The panel apparently viewed this case as unique because the 1855 Treaty provided for allotment in the same treaty that set aside lands for LTBB. But that was not unusual. If the panel were right, the Supreme Court and this Court got things terribly wrong in cases including *Nebraska v. Parker*, 577 U.S. 481 (2016); *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999); *Naftaly*, 452 F.3d at 519–20; and *Cardinal v. United States*, 954 F.2d 359 (6th Cir. 1992). All involve allotment treaties, and all declare those treaties to have created reservations.

Second, the panel believed that LTBB had to show that the federal government had "actively" superintended LTBB's reservation for the reservation to exist (while dismissing LTBB's clear evidence the government did just that). But the Supreme Court has never required such a showing, and the panel's imposition of one directly conflicts with then-Judge Gorsuch's opinion for the

Tenth Circuit in *Hydro Resources, Inc. v. E.P.A.*, 608 F.3d 1131, 1148–57 (10th Cir. 2010), which explained that evidence of "active" federal superintendence is required for one form of "Indian country"—dependent Indian communities—*but not* for reservations.

The Court should grant rehearing en banc to secure uniformity in its decisions.

BACKGROUND

In 1836, LTBB's predecessors-in-interest and several other bands entered into the Treaty of Washington, 7 Stat. 491, RE558-27, ceding approximately one third of present-day Michigan to the United States. The treaty established reservations for "five years only" and allowed for removal to the West. *Id*. The bands, however, resisted removal. By the 1850s, federal policy shifted to "civilizing" Indians within reservations. The architect of that policy was George Manypenny, principal negotiator of the 1855 Treaty. "Manypenny believed that … through the reservation system … [the Indians] could gradually become … civilized and eventually … incorporated completely into non-Indian society." *Naftaly*, 452 F.3d at 518 (quotation marks omitted).

Allotment was "[a]n important complement to the reservation policy," as it would "instill in Indians the idea of private property, and through it,

civilization." Cohen's Handbook of Federal Indian Law § 1.03[6][a], at 61 (2012). Accordingly, Manypenny declared that Indians would be "concentrated upon reservations … and provision made for the division of the land among them in severalty[.]" 1855 Indian Affairs Report, RE558-50, PageID#7537.

Manypenny implemented that policy in the 1855 Treaty (with the same tribes signatory to the 1836 Treaty). During negotiations, the Indians were told that the government's "object" was "to have you civilized" and thus that "[t]he government is willing to take care of your property; but if you improve *for the next twenty years* as fast as you have during the last five … you can take care of it as well for yourselves[.]" Council Proceedings, RE558-09, PageID#7075 (emphasis added). Tribal representatives understood their lands would remain under federal protection, with "not only a rope to our lands but a forked rope, which is attached to all our interests so that you can hold on to it." *Id*., PageID#7083.

Article 1 of the Treaty "withdr[e]w from sale" defined tracts for each band. RE558-06, PageID##6893–6894. Thereafter, tribal members could select allotments of land "within the tract reserved herein for the band to which he may belong," *id*., PageID#6894, with restrictions against alienation for "so long as [the President] may deem necessary," *id*., PageID#6895. It further

provided for the appropriation of "land within the aforesaid reservations for the location of churches, school-houses, or other educational purposes." *Id*.

Federal agents understood the lands to be "reservations … set apart … as the permanent … home of the Indian." 1866 Indian Affairs Report, RE558-66, PageID##7718–7719. Because the Indians were "under the guardianship of the United States," the government must "protect them upon the reserves set apart for their occupancy." 1871 Indian Affairs Report, RE558-70, PageID##7745–7746.

In 1864, the Commissioner of Indian Affairs recommended additional lands be withdrawn from sale for "the enlargement of the Little Traverse Reservation." Executive Orders, RE559-41, PageID#8355. The Secretary of the Interior "submitted [that recommendation] to the President with the recommendation that lands be withdrawn from sale *for the purpose indicated*," *id.* (emphasis added), and President Lincoln did so "as recommended," *id*., PageID#8356, though the plan was later abandoned. In 1872 and 1875 statutes, Congress referred to "the reservation made … by the [1855] treaty," § 1, 17 Stat. at 381, and to the "lands reserved for Indian purposes under the [1855] treaty," § 3, 18 Stat. at 516.

In 2015, LTBB sued the State, seeking a declaration that (1) the 1855 Treaty established a reservation for LTBB, and (2) Congress never disestablished it. On

August 15, 2019, the district court granted summary judgment against the Band, holding that the 1855 Treaty had not established a reservation. Opinion, RE627, PageID#12230. On May 18, 2021, the panel affirmed. The question of any subsequent disestablishment is accordingly not before this Court.

REASONS FOR GRANTING THE PETITION

The panel failed to acknowledge, let alone to address, key Treaty language. That fundamental mistake led the panel into two further errors, creating conflicts with decisions of the Supreme Court, this Court, and the Tenth Circuit, and rewriting the history of LTBB and other Michigan tribes in the process. This case presents "compelling" grounds for en banc review. *Mitts v. Bagley*, 626 F.3d 366, 370 (6th Cir. 2010) (Sutton, J., concurring).

I. By Failing to Acknowledge or Adhere to Treaty and Statutory Text, the Panel Decision Conflicts with Supreme Court and Sixth Circuit Precedent.

"Treaty analysis begins with the text, and treaty terms are construed as they would naturally be understood by the Indians." *Herrera*, 139 S. Ct. at 1701 (quotation marks omitted). Here, the text should have been dispositive. In the 1855 Treaty, the United States promised to "withdraw from sale … all the unsold public lands" within specified areas for various tribes. It did so "for the benefit of said Indians," including (in clauses 3 and 4 of Article 1) for the bands that were LTBB's predecessors-in-interest. RE558-06, PageID#6893. The Treaty

identified these lands "reserved herein for the band[s]" as the "aforesaid reservations." *Id.*, PageID##6894–6895.

If more were needed, Congress in 1872 and 1875 enacted statutes confirming the point. These statutes addressed lands falling within "the reservation made … by the treaty of … [1855]," § 1, 17 Stat. at 381, and "the lands reserved for Indian purposes under the [1855] treaty," § 3, 18 Stat. at 516. In *McGirt*, the Court found that when Congress followed the Creek Nation's 1832 treaty (which did not use the word "reservation") with an 1866 treaty and an 1873 statute (which did), these subsequent acts "left no room for doubt" that the lands were reservations. 140 S. Ct. at 2461. So too here.

Prior to this litigation, no court, anywhere, had ever held that an Indian treaty setting apart lands as a "reservation" failed to create one. Yet the panel nowhere acknowledged the 1855 Treaty's reservation language. As best as LTBB can tell, the panel rested this abandonment of text on the belief that "[d]espite its present-day meaning, the word reservation, as used in the nineteenth century, 'had not yet acquired such distinctive significance in federal Indian law,'" Slip Op. at 14 (quoting *McGirt*, 140 S. Ct. at 2461).[1] For three reasons, the panel went badly astray and created multiple conflicts in the process.

[1] The panel used like reasoning to dismiss numerous reports and letters from federal and tribal officials describing the LTBB lands as a "reservation." Slip

First, the panel did what *McGirt* forbade—"substituting stories for statutes," 140 S. Ct. at 2470—based on a misreading of the passage from *McGirt* on which it relied. *McGirt* found that 1832 and 1833 Creek treaties that did *not* use the term "reservation" nevertheless *established* one, reasoning in part that the term may have lacked particular currency at the time of "*[t]hese early treaties*." *Id.* at 2461 (emphasis added). But *McGirt* nowhere suggests that lands subsequently denominated a reservation by treaty and statute might not be one.

Second, the panel opinion does not "tell[] the story we are promised," *id.* at 2470. By the 1850s, the term "reservation" was not enigmatic. In *Naftaly*, this Court detailed the federal government's shift from the removal policy of the 1840s toward "the reservation system[.]" 452 F.3d at 518. And no one was more familiar with that system than Commissioner Manypenny, who oversaw the negotiations of the 1854 Treaty with the Chippewa (at issue in *Naftaly*), *id.*, and directly negotiated the 1855 Treaty (at issue here), Slip Op. at 6–8. It beggars belief to say that the architect of the reservation system used the term "reservation" without intending it to convey meaning (and thereby calling into

---

Op. at 19. Those materials, though secondary, evidence the parties' practical construction of the treaty. And the wealth of material thus discarded is breathtaking, including the recommendation by the Secretary of the Interior and the Commissioner of Indian Affairs that the "Little Traverse Reservation" be enlarged, and President Lincoln's issuance of an executive order withdrawing lands to that end. LTBB Br. at 15.

question the good faith of the United States in the process). Nor can there be a serious claim that when Congress enacted its 1872 and 1875 statutes—passed just before, and just after, the 1873 statute emphasized in *McGirt*—the word "reservation" lacked significance.[2]

Third, the panel's result is especially indefensible set against the rule "that Indian treaties are to be interpreted liberally in favor of the Indians," with "ambiguities … resolved in their favor." *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 200 (1999); *Cty. of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 269 (1992) (same for statutes); *Naftaly*, 452 F.3d at 527 (treaties); *Memphis Biofuels, LLC v. Chickasaw Nation Indus., Inc.*, 585 F.3d 917, 921 (6th Cir. 2009) (statutes). When the panel found "unclear" the term "reservation," as it did for the 1872 and 1875 statutes, Slip Op. at 19, the Indian canon required it to resolve that ambiguity in favor of LTBB.

[2] Nor does it matter that Congress did not use the term reservation again in an 1876 amendment. Slip Op. at 19. Congress need not repeat itself thrice. And while the panel cited to the 1994 statute restoring LTBB to federal recognition, Congress explicitly referred there to "the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I … of the Treaty of 1855." § 4(b)(2)(A), 108 Stat. 2156, 2157–58 (1994); *see also* S. Rep. No. 103-260, at 2 (1994) ("[t]he historical record is clear ... that the 1855 treaty ... created what were intended to be permanent reservations for the tribes.").

II. The Panel Grafted Two Additional Requirements onto the Reservation-Establishment Test in Conflict with Supreme Court, Sixth Circuit, and Sister Circuit Precedent.

The panel compounded its departure from text by rewriting the reservation-establishment test. It made two fundamental errors that, if uncorrected, will upend long-settled expectations about when Indian tribes have reservations.

A. Allotment

The panel held that the 1855 Treaty could not have created a reservation because it provided for *allotment* (i.e., ownership of land by individual Indians, with alienation restrictions that could be lifted over time). According to the panel, "although the Treaty of 1855 might have set apart land for an Indian purpose, that purpose was not a reservation." Slip Op. at 17. That was so, it said, because "[m]ost typically, Indian reservations were created through acts … provid[ing] tracts of land to tribes" whereas "Indian allotments were typically smaller lots owned by individual tribal members." *Id.* at 14. The panel was incorrect on its own terms, as the Treaty plainly sets apart tracts for the tribes, with individuals allowed to select allotments "within *the tract reserved herein for the band* to which he may belong," RE-558-06, PageID#6894 (emphasis added).[3]

[3] By contrast, "public domain allotments," *see* Panel Op. 17, were issued directly to individuals from the public domain, and pursuant to statutes, not treaties, beginning well after the 1850s. *See* Cohen's Handbook § 16.03[2][e] & n. 48-49 (citing 1875 and later statutes).

For three reasons, the panel's conclusion that the provision for allotments in this manner precludes a reservation finding warrants en banc review.

First, it rewrites the Supreme Court's reservation-establishment test. As *McGirt* reaffirmed, "to create a reservation …. [i]t is enough that … there results a certain defined tract appropriated to certain purposes[.]" 140 S. Ct. at 2475 (quoting *Minnesota v. Hitchcock*, 185 U.S. 373, 390 (1902)). The Court has not asked whether the treaty or other instrument provided for individual land ownership within such tracts.

Second, this is for good reason: Allotment is "completely consistent with" reservation status. *Id.* at 2464 (citation omitted). Indeed, "[f]or years, States have sought to suggest that allotments automatically ended reservations, and for years courts have rejected the argument…. [T]his Court has explained repeatedly that Congress does not disestablish a reservation simply by allowing the transfer of individual plots, whether to Native Americans or others." *Id*.

The panel appeared to believe that this case differs because the same instrument provided for the reservation of lands and allotment. That contradicts not just text and precedent, but history. Manypenny explained that Indians would be "concentrated upon reservations of limited extent, and provision made for the division of land among them in severalty." 1855 Indian Affairs Report, RE558-50. As this Court explained in *Naftaly*, "excessive quantities of lands held in common"

was among the "evils" of past practice that Manypenny sought to end with his new reservation policy. 452 F.3d at 518–19. And the leading Indian-law treatise explains that "[b]y 1858 federal policy had shifted fully from removal to concentration on fixed reservations," where land would be "divid[ed] among [Indians] in severalty" to create "schools for civilization[.]" Cohen's Handbook § 1.03[6][a], at 60–61.

Third, and relatedly, this Court and the Supreme Court have recognized that treaties providing for allotment established reservations. That is why the United States has rejected "the fictitious dichotomy between treaties that allowed for allotments and treaties that established ... reservations," United States' Combined Reply in Support of Its Motion for Partial Summary Judgment at 4, *Saginaw Chippewa Indian Tribe v. Granholm*, No. 05-10296-BC, 2010 WL 5185114 (E.D. Mich. Dec. 17, 2010). Those treaties include:

- The 1855 Treaty with the Chippewa, Article 2 of which provided for allotment of the "reservation[s]" it created, with the President issuing patents to allottees "at his discretion" and alienation restrictions removable after five years. Art. II, 10 Stat. 1165. *Mille Lacs* recognized that "Article 2 set aside lands in the area as reservations." 526 U.S. at 184.

- *Nebraska v. Parker* described another allotment treaty, the 1854 Treaty with the Omaha, 10 Stat. 1054, as "creat[ing] a 300,000-acre reservation." 577 U.S. at 484.

- *United States v. Thomas*, 151 U.S. 577, 582 (1894), found that yet another allotment treaty, Manypenny's 1854 Treaty with the Chippewa, 10 Stat. 1109, provided "for the formation of permanent reservations," a

conclusion reiterated by this Court in *Cardinal*, 954 F.2d at 364, and *Naftaly*, 452 F.3d at 519.

B. Federal Superintendence

The panel also incorrectly held that the reservation-establishment test requires a showing of "active[]" federal superintendence. Slip Op. at 20. Perplexingly, it claimed LTBB had "omit[ted] this element in its brief," *id.*, when LTBB devoted *17 pages* to this issue, LTBB Br. at 49–54; LTBB Reply at 6–12, 58–65. While the panel may have overlooked LTBB's arguments, LTBB did not waive them.

At the outset, even if an affirmative showing of "active" superintendence was required, the Band made it. As the panel acknowledged, Slip Op. at 21–22, under the 1855 Treaty, federal officials needed to administer the allotment provisions and to secure common land for churches and schools, art. 1; to operate those schools, art. 2, cl. 1; and to oversee the development of agricultural skills essential to getting tribal members "permanently settled" on the reservations, art. 2, cl. 2. 11 Stat. 621. For years after the Treaty, federal officials—who viewed the Indians as "under the guardianship of the United States," such that the government must "protect them upon the reserves set apart for their occupancy," RE558-70, PageID##7745–7746—engaged in many of these actions, *see* LTBB Br. at 50–54; LTBB Reply at 58–65, even if not always effectively. The panel had no adequate answer to these badges of

superintendence.

But more fundamentally, by requiring "active" superintendence, the panel applied the wrong test and brought this Court into conflict with the Tenth Circuit. "Indian country" comes in three forms: (1) "reservation[s]" under 18 U.S.C. § 1151(a); (2) "dependent Indian communities" under § 1151(b); and (3) off-reservation "allotments" under § 1151(c). Each category requires that the federal government set aside particular lands and that the lands be under federal superintendence. *United States v. John*, 437 U.S. 634, 649 (1978). The "superintendence" inquiry, however, differs by category.

Reservations are explicitly created by federal instrument, and the federal government has the power and duty to superintend reservation lands *as a matter of law* (as it does for off-reservation allotments under § 1151(c)). Hence, "whenever the United States set[s] apart any land … as an Indian reservation … [it has] full authority to pass such laws and authorize such measures as may be necessary to give to these people full protection." *Thomas*, 151 U.S. at 585. The federal government is always *supposed* to superintend Indian reservations, but the United States has "broken more than a few of its promises" to Indian tribes, *McGirt*, 140 S. Ct. at 2462, including promises of superintendence, *e.g.*, *Grand Traverse Band of Ottawa & Chippewa Indians v. Office of U.S. Att'y for W. Dist. of Mich.*, 369 F.3d 960, 961 n.2 (6th Cir. 2004) (describing how, in 1872, the executive

improperly abandoned its "trust obligations to the tribes" under the 1855 Treaty).

That is why, to the Band's knowledge, no court prior to this litigation has required a *factual* showing of *active* superintendence on reservations. This is true for cases ranging from *Donnelly v. United States*, 228 U.S. 243 (1913)—which Congress relied on when it drafted § 1151(a), *see Oneida Nation v. Vill. of Hobart*, 968 F.3d 664, 679 n.8 (7th Cir. 2020)—to *McGirt*, where the Court found it "obvious" that the Creek had a reservation without devoting a word to superintendence, 140 S. Ct. at 2460.

Dependent Indian communities differ. For this "catch-all … category of Indian lands," *Hydro Resources*, 608 F.3d at 1157 (quotation marks omitted), federal superintendence does not attach as a matter of law. Thus, the question for the courts—and the very purpose of the "active federal control" inquiry under § 1151(b)—is to ascertain whether Congress has assumed that obligation *as a matter of fact*. In *Hydro Resources*, then-Judge Gorsuch wrote for the Tenth Circuit in explaining the distinction and its separation-of-powers grounding:

> Congress—not the courts, not the states, not the Indian tribes—gets to say what land is Indian country subject to federal jurisdiction. *It is long settled that Congress does so by declaring land to be part of a reservation, or by authorizing its distribution as Indian allotments*. And so … Congress must take some *equally "explicit action* … to create or to recognize" dependent Indian communities. When seeking to identify a § 1151(b) "dependent Indian community," we must ask whether Congress has explicitly set aside the "land in question" for Indian use and put it under federal superintendence.

Id. at 1150–51 (emphases added) (last ellipses in original) (citation omitted).

The panel's grafting of the "1151(b) test," *id*. at 1155, onto the reservation inquiry thus contradicts the long-held understanding that federal superintendence inheres in reservation status. The conflict created by the panel with the Tenth Circuit, and the doctrinal confusion that its conflation of the different categories of Indian country will engender, call for en banc review.

CONCLUSION

Rehearing en banc is necessary to restore uniformity to this Court's decisions in this important area of the law.

Dated this 1st day of June, 2021

Respectfully submitted,

By: /s/ Riyaz A. Kanji

Riyaz A. Kanji
David A. Giampetroni
KANJI & KATZEN, P.L.L.C.
303 Detroit Street, Suite 400
Ann Arbor, Michigan 48104
(734) 769-5400
rkanji@kanjikatzen.com

James A. Bransky
General Counsel
LITTLE TRAVERSE BAY BANDS
OF ODAWA INDIANS
9393 Lake Leelanau Drive
Traverse City, Michigan 49684
(231) 946-5241
jbransky@chartermi.net

Donna L. Budnick
Legislative Services Attorney
LITTLE TRAVERSE BAY BANDS
OF ODAWA INDIANS
7500 Odawa Circle
Harbor Springs, Michigan 49740
(231) 242-1424
dbudnick@ltbbodawa-nsn.gov

Ian Heath Gershengorn
Zachary C. Schauf
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
igershengorn@jenner.com

Counsel for Plaintiff – Appellant

CERTIFICATE OF COMPLIANCE

This document complies with Federal Rules of Appellate Procedure 35(b)(2)(A) and 40(b)(1) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), it contains no more than 3,900 words. This document contains 3,899 words.

This document complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using 14-point Times New Roman.

/s/ Riyaz A. Kanji
Riyaz A. Kanji

CERTIFICATE OF SERVICE

I certify that on June 1, 2021, this document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

/s/ Riyaz A. Kanji
Riyaz A. Kanji