24-804

No. 24-

IN THE

Supreme Court of the United States

FRANK W. BIBEAU,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Commissioner of Internal Revenue, a federal agency, applied federal income tax to the on-reservation income of an Indian despite a constitutional provision that Indians Not [be] Taxed and in the absence of an Act of Congress clearly authorizing the tax.

The question presented is: Did the Court of Appeals err in upholding federal income tax on an individual Indian's self-employment income earned on his Tribe's reservation without Treaty, constitutional, or congressional expressly stated authorization for that taxation?

STATEMENT OF RELATED CASES

Frank W. Bibeau v. Commissioner of Internal Revenue, No. 23-2923, U.S. Court of Appeals for the Eighth Circuit. Judgment entered July 19, 2024.

Frank Warren Bibeau v. Commissioner of Internal Revenue, Docket No. 11483-20L, U.S. Tax Court. Judgment entered May 24, 2023.

Frank Warren Bibeau v. Commissioner of Internal Revenue, Docket No. 11483-20L, U.S. Tax Court. Judgment entered May 25, 2023.

Frank W. Bibeau v. Commissioner of Internal Revenue, No. 23-2923, U.S. Court of Appeals for the Eighth Circuit. Judgment entered September 26, 2024.

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Bibeau v. Commissioner of Internal Revenue, 108 F.4th 1038 (2024), 134 A.F.T.R.2d 2024-5114

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JURISDICTIONAL STATEMENT

Under Supreme Court Rule 13 a petition for a writ of certiorari to review a judgment in any case, entered by a United States court of appeals is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. The Eighth Circuit ordered that the petition for rehearing en banc and the petition for rehearing by the panel were both denied on September 26, 2024. On December 12, 2024, Petitioner's Application (24A567) for 30-day extension was granted by Justice Kavanaugh extending the time to file petition until January 24, 2025, this petition is timely filed by that order.

CONSTITUTIONAL, TREATY AND STATUTORY PROVISIONS INVOLVED

Commerce Clause (U.S. Const., art. 1, § 8, cl. 3)

5th Amendment

14th Amendment

16th Amendment

The Chippewa have 44 Treaties with the United States from 1785 to 1867. The primary Treaties involved here are:

1817 Treaty of the Rapids of the Miami of Lake Erie with the Wyandot, Seneca, Delaware, Shawnee, Potawatomi, Ottawa, and Chippewa on Sept. 29, 1817, 7 Stat., 160., Proclamation, Jan. 4, 1819

1825 Treaty with the Sioux and Chippewa, Sacs and Fox, Menominie, Ioway, Sioux, Winnebago, and a portion of the Ottawa, Chippewa, Potawattomie, Tribes, Proclamation, 7 Stat., 272, Feb. 6, 1826.

1826 Treaty with the Chippewa, Stat. 7, 290, Proclamation, Feb. 7, 1827.

1837 Treaty with the Chippewa, July 29, 1837, 7 Stat. 536.

1855 Treaty with the Chippewa, Feb. 22, 1855, 10 Stat., 1165, Ratified Mar. 3, 1855, Proclaimed Apr. 7, 1855.

Trade and Intercourse Act of June 30, 1834, c. 161, s 8, 4 Stat. 730.

Indian Citizenship Act of 1924, Pub. L. No. 68-175, ch. 233, 43 Stat. 253, 253 (codified at 8 U.S.C. § 1401(b))

STATEMENT OF THE CASE

Petitioner Frank Bibeau is an enrolled member of the Chippewa tribe who lives and practices law on the Leech Lake Reservation in Minnesota. In a treaty with the United States, the Chippewa kept the right to "hunt, fish, and gather the wild rice" on their traditional lands. Bibeau says this is really the right to "food, clothing and shelter

and travel, whereby the new canoe is the automobile." Bibeau and his wife filed joint returns for their 2016 and 2017 tax years. For both years, Bibeau reported income from his law practice [. . . b]ut his self-employment income still led to a total self-employment tax liability for both years of $6,000. He has never paid this tax debt. (See Tax Court Judge Holmes *Memorandum Opinion* dated May 24, 2023).

The legal services that [Petitioner provided in 2016 and 2017] are for (1) protection of tribal natural resources for hunting, fishing and gathering rights on and off reservation, (2) Election Judge for Minnesota Chippewa Tribe [and Represented Leech Lake Res. in an on-reservation election dispute at Tribal Court] and (3) historical research to support additional tribal and members' rights under the Chippewa Treaties. (See Petitioner's *pro se* Petition to U.S. Tax Court dated August 20, 2020).

SUMMARY OF ARGUMENT

No federal treaty, constitutional, or statutory provision expressly authorizes federal taxation of the income of individual Indians earned on their reservations. The decision below perpetuates implicit authorization that should be reviewed and corrected by this Court to comport with originalism and textualism. Further, the Court should resolve a conflict between two canons of construction pertinent to interpreting constitutional and statutory provisions relating to federal taxation of Indians—1) the Tax Law canon of general applicability that would support the tax, and 2) the Indian Law canon which would not support the tax.

The unique nature of the relationship between Indian Tribes and the United States requires clarity as to how the canons will ultimately control interpretation of the Constitution and the Indian Citizenship Act of 1924.

BACKGROUND

Petitioner Frank Bibeau is an enrolled member of the Minnesota Chippewa Tribe, who lives and practices law from his home on restricted, trust lands on the Leech Lake Reservation in Minnesota. Bibeau argues that neither the Indian Citizenship Act of 1924 nor the treaties between the United States and the Chippewas authorize the federal taxation of Indians. Bibeau considers his intramural, self-employment income from *Indian Country* part of his *modernized* usufructuary property rights to hunt, fish, trap and gather to earn a *modest living*,[1] exempt from federal taxation.

The United States Tax Court disagreed and held Bibeau's self-employment income is taxable. The Eighth Circuit below upheld the Tax Court's decision and followed its prior 2-1 divided decision in *Fond du Lac Band of Lake Superior Chippewa v. Frans*, 649 F.3d 849 (8th Cir. 2011), which determined a nexus between the 14th Amendment and the Indian Citizenship Act to enable the State of Minnesota to tax an on-reservation Indian's out-of-state retirement income without express Congressional

1. See *Lac Courte Oreilles Band v. Wisconsin* (Voigt Decision), 700 F.2d 341 (1983). (A trial was held in this case in March 1988 to determine two issues: (1) the economic value of the "modest standard of living" guaranteed [Chippewa] plaintiffs under their treaties with the United States; and (2) the income-generating potential of the available resources in the ceded territory of northern Wisconsin).

authorization or consent of the Indians. The Eighth Circuit's decision in *Frans* is nearly the opposite that this Court reached just last term in *Trump v. Anderson*, 601 U.S. —, 144 S. Ct. 662, 668 (2024) (per curiam). This petition challenges the federal income taxation by the Executive Branch in the absence of a clearly expressed act of Congress containing intent to apply federal taxation to Indians. Moreover, the Indian Citizenship Act contained a *proviso* stating that by granting Indians citizenship, the Act "shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property." Indian Citizenship Act of 1924, Pub. L. No. 68-175, ch. 233, 43 Stat. 253, 253 (codified at 8 U.S.C. § 1401(b)). A plain reading of the Act's *proviso* protects Petitioner's various tribal, Chippewa, and personal and real property from impairment by taxation without Congressional authorization.

INTRODUCTION

Federal income taxation[2] of Indians has never been authorized by an Act of Congress, with clear and precise language and notice to the Tribes and Indians and with *due process* Congressional hearings about the intent of Congress to authorize federal taxation of all the *Indians not taxed*. This *Indians not taxed* defense, using the express *proviso* in the Indian Citizenship Act of 1924 (ICA 1924),[3] is a case of first impression. No act of Congress—

2. See Sixty-eighth Congress. Sess. I. Chap. Chap 234, *Revenue Act of 1924*, pp 253- 354 (102-page act the term "Indian" never mentioned).

3. Id. see also *Indian Citizenship Act of 1924 Sixty-eighth Congress. Sess. I. Chap.* Chap. 233, Indians born in U.S. declared citizens, p 253, also known as the *Snyder Act.*

by either its text or its legislative history—evinces a Congressional intent to subject reservation Indians to federal income taxation for income derived for the benefit and protection of Tribal member's environmental and cultural rights in *Indian Country.*

Congress has enacted federal laws like the General Allotment Act of 1887 (GAA)[4] which applied to certain tribes. In 1889 Congress enacted *The Nelson Act, An Act for the Relief and Civilization of the Chippewa Indians in the State of Minnesota,*[5] in conformity with the GAA. The GAA does speak of individual Indian allotments transitioning to fee lands (which lands would become taxable by states and counties), but not federal taxation.

The GAA did provide for *Adopting Habits of Civilized Life* in Section 6 of the GAA asserting "That every Indian . . . *who has voluntarily taken up* . . . residence separate and apart from any tribe . . . that has adopted the habits of civilized life . . . is hereby declared to be a citizen of the United States . . . without in any manner *impairing or otherwise affecting the rights of any such Indian to tribal or other property.*" This *tribal or other property* language is almost identical to the proviso in the ICA 1924.

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4. See General Allotment Act (or Dawes Act), Act of Feb. 8, 1887 (24 Stat. 388, ch. 119, 25 U.S.C. § 331), Acts of Forty-ninth Congress–Second Session, 1887

5. The Statutes at Large of the United States of America from December 1887, to March, 1889, and Recent Treaties, Postal Conventions, and Executive Proclamations. Vol. XXV, pp. 642-646. CHAP 24.- An act for the relief and civilization of the Chippewa Indians in the State of Minnesota. (51st-1st- Ex.Doc.247; 25 Stat. 642).

In the act of March 3, 1921 (41 Stat. 1249-50), citizenship was extended to all members of the Osage tribe of Indians, after the 1906 Act authorized the state of Oklahoma and the County to levy and collect a gross production tax upon all oil and gas produced in Osage County, Oklahoma.[6]

Here on the Leech Lake Reservation, "[i]n July 1924, a little over a month after the passage of the Indian Citizenship Act, the Chippewa Indians of Minnesota[7] held their annual general council meeting at Cass Lake, Minnesota" and were informed that "[a] law has been passed making the Indians full citizens of the United States and of the States wherein they reside and it will not be for very much longer that we will gather together in this fashion."[8] However, the Act of Congress with the clear and precise language that made Indians citizens in 1924, also *clearly intended* to limit the Act's collateral scope and susceptibility, including removing the word "full" from "full citizenship" in the bill.[9]

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6. An Act To amend section 3 of the Act of Congress of June 28, 1906, entitled "An Act for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes."

7. *Now* federally identified as the *Minnesota Chippewa Tribe.*

8. See *Challenging American Boundaries: Indigenous People and the "Gift" of U.S. Citizenship*, Kevin Bruyneel, Babson College, Studies in American Political Development, 18 (Spring 2004) at FN 40.

9. See *Indian Citizenship Act: Granted Citizenship but Not Voting Rights*, by Robert Longley, Updated on June 10, 2022. Progressive senators and activists, like the "Friends of the Indians," and senators on the Senate Indian Affairs Committee were for the Act because they thought it would reduce corruption

In fact, Longley points out that "for whatever reasons it was enacted, the Indian Citizenship Act did not grant Native people voting rights. Except for the Fifteenth and Nineteenth Amendments, which ensure African Americans and women respectively the right to vote in all states, the Constitution grants the states the power to determine voting rights and requirements."[10]

FOURTEENTH AMENDMENT

Indians were specifically not made citizens under the 14th Amendment. "In the bill as originally reported from the Judiciary Committee there were no words excluding ['']Indians not taxed['] from the citizenship proposed to be granted."[11] Due to various concerns expressed "Mr. Trumbull, who reported the bill, modified it by inserting the words ['']excluding Indians not taxed.[''][12] What was intended by that modification appears from the following language used by him in debate:

> * * * *Of course we cannot declare the wild Indians who do not recognize the Government*

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and inefficiency in the Department of Interior and the Bureau of Indian Affairs. The removal of the word "full" from "full citizenship" in the final text of the bill was used as a reason why some Native Americans were not immediately granted the right to vote after the enactment of the law.

10. Id. *Native American Voting Rights.*

11. See *Method of Determining "Indians Not Taxed"*, Dept. of Interior Opinion M- 31039 at 991, Nov. 7, 1930, Synopsis of Solicitor's Opinion. Margold, Solicitor. Approved: November 7, 1940, W. C. Mendenhall, Acting Assistant Secretary.

12. Id.

> *of the United States at all, who are not subject to our laws, with whom we make treaties, who have their own regulations, whom we do not pretend to interfere with or punish for the commission of crimes one upon the other, to be the subjects of the United States in the sense of being citizens. They must be excepted.*
>
> The Constitution of the United States excludes them from the enumeration of the population of the United States, when it says that Indians not taxed are to be excluded. It has occurred to me that perhaps an amendment would meet the views of all gentlemen, which used these constitutional words, and said that all persons born in the United States, excluding Indians not taxed, and not subject to any foreign Power, shall be deemed citizens of the United States." (Cong. Globe, 1st sess., 39th Cong., p. 527.)[13]

The Congressional intent for the constitutional status, *excluding Indians not taxed* was re-affirmed when "[i]n 1870, the U.S. Senate Judiciary Committee declared 'the 14th amendment to the Constitution has no effect whatever upon the status of the Indian tribes within the limits of the United States.'"[14] Also, in 1870, the Chippewas, as

13. See *Method of Determining "Indians Not Taxed"*, at 990. (Emphasis added).

14. See FN 9 supra above, *Indian Citizenship Act: Granted Citizenship but Not Voting Rights*, by Robert Longley. But Compare *Fond du lac v Frans* 2010, 8th Circuit deciding the 14th Amdt. is the nexus for Indian's state citizenship enabling state taxation of tribal member for Ohio retirement received on his reservation.

a historic sovereign nation, have 44 treaties with the United States (1795-1871). At all times during all of the 44 Chippewa Treaties with the U.S., the Chippewa were also included as being *Indians not taxed* from the beginning in the U.S. Const. and through the 14th Amendment. Here, Petitioner's Chippewa Treaty Rights are not addressed if a tax case addressed a different tribe, a different treaty, and a different right. See also *U.S. v. Brown* distinguishing Chippewas exclusive treaty rights, from treaty rights to fish in common with the citizens of the territory or United States.

PRINCIPLES OF TREATY AND STATUTORY INTERPRETATION

"Treaty analysis begins with the text," and treaties "are construed as they would naturally be understood by the Indians." *Herrera v. Wyoming*, 139 S. Ct. 1686, 1701 (2019) (citation omitted). A court is to "look beyond the written words to the larger context that frames the Treaty, including 'the history of the treaty, the negotiations, and practical construction adopted by the parties. *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999) (citation omitted). Treaties are to be interpreted "liberally, resolving uncertainties in favor of the Indians[.]" *United States v. Brown*, 777 F.3d 1025, 1031 (8th Cir. 2015) (citing *Mille Lacs*, 526 U.S. at 200).

The Supreme Court has explained that "[a]s a general rule, Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them . . . [and] [t]hese rights need not be expressly mentioned in the treaty." *United States v. Dion*, 476 U.S. 734, 738, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986). Individuals may assert these rights "unless [they]

were clearly relinquished by treaty or have been modified by Congress." Id.

Statutes, likewise, are to be "construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit[.]" *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985). What is essential here for this Chippewa Treaties tax immunity treaty defense is that when

> examining each treaty applicable to the territory in question, in light of the *Mille Lacs* methodology, is it possible to determine ***whether usufructuary property rights [to hunt, fish and gather] were retained from the fee simple bundle of property interests for which the treaty negotiators bargained***, in relation to the territory in question. Then, tracing those bargained-for usufructuary property interests to the present to determine whether Congress acted to abrogate the treaty-guaranteed property interest in language intended for that purpose, understood as such by the native signatories to the treaties."[15]

15. *Minnesota v. Mille Lacs Band of Chippewa: 19th Century U.S. Treaty-Guaranteed Usufructuary Property Rights, the Foundation for 21st Century Indigenous Sovereignty* by Peter Erlinder, Law and Inequality [Vol. 33: 143 2015] Professor of Law (ret.), William Mitchell College of Law, St. Paul, MN 55105; Director, International Humanitarian Law Institute, St. Paul, MN 55101. The Author's research for this Article began on boat launching ramps in Northern Wisconsin in early spring of the 1980s. Legal observers from the Minnesota Chapter of the National Lawyers Guild spent long, cold nights interposed

The most important part of the treaty examination is remembering as the *Smiskin*[16] Court reminded

> [t]he Supreme Court's jurisprudence makes clear, however, that we must interpret a treaty right in light of the particular tribe's understanding of that right at the time the treaty was made, and *Baker*[17] addressed a different tribe, a different treaty, and a different right.[18]

ARGUMENT

CHIPPEWA TREATY PROTECTED USUFRUCTUARY RIGHTS, TAX IMMUNITY (OR EXEMPTION) AND RIGHT TO EARN A MODEST LIVING

In the *1817 Treaty with Wyandot, Chippewa etc.*,[19] the Chippewa, along with other Tribes cedes lands to the

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between 1854 Treaty rights activists from the Lac Courte Oreilles Reservation launching canoes for the spring walleye harvest and armed, non-Indian, anti-Treaty protestors threatening violence under the motto, "Save a Fish, Spear an Indian."

16. See *U.S. v. Smiskin*, 487 F.3d 1260, 1266-67 (2007)

17. Id. *United States v. Baker*, 63 F.3d 1478, 1484 (9th Cir.1995).

18. Id. citing *Puyallup Tribe v. Dep't of Game of Wash.*, 391 U.S. 392, 397, 88 S.Ct. 1725, 20 L.Ed.2d 689 (1968)

19. See *1817 Treaty of the Rapids of the Miami of Lake Erie with the Wyandot, Seneca, Delaware, Shawnee, Potawatomi, Ottawa, and Chippewa on Sept. 29, 1817*, 7 Stat., 160., Proclamation, Jan. 4, 1819.

U.S., for several other Tribes to have a reserved home with the *tracts of land granted in* ***fee simple*** "to the chiefs, for the use of the Wyandot, Shawnese, Seneca, and Delaware Indians, and the reserve for the Ottawa Indians, **shall not be liable to taxes of any kind so long as such land continues the property of the said Indians.**"[20] Here, the Chippewa and other Tribes clearly understood the link between *fee simple* lands being likely considered taxable somewhere, somehow, after they were ceded to the United States. Consequently, here the customary Indian treaty tax immunity the Chippewa held on their lands *was changed* to create a *tax exemption* for the Wyandot, Shawnese, Seneca, and Delaware Indians, and the Ottawa Indians who were receiving tracts of land granted in fee simple.

The Eighth Circuit pointed out in the *U.S. v. Brown*[21] appeal that the Supreme Court has explained that "[a]s a general rule, Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them . . . [and] [t]hese rights need not be expressly mentioned in the treaty." *United States v. Dion*, 476 U.S. 734, 738, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986). Individuals may assert these rights "unless [they] were clearly relinquished by treaty or have been modified by Congress." Id.

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20. Id. Art. 15. The tracts of land herein granted to the chiefs, for the use of the Wyandot, Shawnese, Seneca, and Delaware Indians, and the reserve for the Ottawa Indians, *shall not be liable to taxes of any kind so long as such land continues the property of the said Indians.*

21. See *U.S. v. Brown*, 777 F.3d 1025, 1031 (8th Cir. 2015).

The 1837 Treaty with the Chippewa[22] did not provide for reservations, because "[t]he privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guarantied to the Indians. . . ."[23] Before that point in time the Chippewa lands yet to be ceded were held by federally recognized title established by the 1825 and reaffirmed by the 1826 Chippewa Treaty. The 1825 Treaty[24] provided for Chippewa right to decide who hunts north of the Prairie du Chien treaty boundary line. Chippewa sovereignty and treaty nation status were clear in the 1826 Treaty[25] when the U.S. drafters included language that *title to the land has not changed* and the *Chippewas retained jurisdiction over lands* north of the 1825 Prairie du Chein boundary. In the 1855 Treaty with the Chippewa[26], Art 7 provides that "the laws which have been or may be enacted by Congress, regulating trade and intercourse with the Indian tribes, to continue and be in force within the several reservations provided for herein." Leech Lake is one of those 1855 reservations.

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22. See *1837 Treaty with the Chippewa*, July 29, 1837, 7 Stat. 536.

23. Id. Art. 5.

24. See *1825 Treaty with the Sioux and Chippewa, Sacs and Fox, Menominie, Ioway, Sioux, Winnebago, and a portion of the Ottawa, Chippewa, Potawattomie, Tribes*, Proclamation, 7 Stat., 272, Feb. 6, 1826.

25. See *1826 Treaty with the Chippewa*, Stat. 7, 290, Proclamation, Feb. 7, 1827.

26. See *1855 Treaty with the Chippewa*, Feb. 22, 1855, 10 Stat., 1165, Ratified Mar. 3, 1855, Proclaimed Apr. 7, 1855.

The *Brown*[27] 8th Circuit Court recounted [i]n *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F.Supp. 1001 (D.Minn.1971), the Leech Lake Band sought a declaratory judgment that the state of Minnesota could not regulate fishing, hunting, and gathering wild rice within its reservation. The United States, also a plaintiff, contended "that the treaty protected rights to hunt, fish, trap and gather wild rice **are property rights to be used in whatever fashion the Indians, as owners, desire, whether to eat, clothe, or sell.**"[28] About 100 years later in the 1944 *State v. Jackson*[29] case the Minnesota Supreme Court recognized that

> The traditional right of Indians to hunt in the Indian country was recognized by congress as early as 1834. In that year congress enacted a law regulating trade and intercourse with Indian tribes (Act of June 30, 1834, c. 161, s 8, 4 Stat. 730), reframed in the Revised Statutes, and still on the statute books, which included a provision now reading as follows:

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27. See *U.S. v. Brown*, 777 F.3d 1025 (2015), citing *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F.Supp. 1001 (D.Minn.1971).

28. Id. citing *Dion* noting "[e]xclusive on-reservation hunting, fishing, and gathering rights are implied from the establishment of a reservation for the exclusive use of a tribe." (Emphasis added). Id. The Supreme Court has explained that "[a]s a general rule, Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them . . . ***[and] [t]hese rights need not be expressly mentioned in the treaty.***" *United States v. Dion*, 476 U.S. 734, 738, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986).

29. *State v. Jackson*, 218 Minn. 429, 16 N.W.2d 752 (1944) (Emphasis added).

> '**Every person, Other than an Indian**, who, within the limits of any tribe with whom the United States has existing treaties, hunts, or traps, or takes and destroys any peltries or game, except for subsistence in the Indian country, shall forfeit all the traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and all peltries so taken; and shall be liable in addition to a penalty of $500.' R.S. § 2137, 25

U.S.C.A. § 216. (Italics supplied.)

By expressly limiting the offense thereby created to persons other than Indians, this statute impliedly excluded Indians.[30] The *1834 Trade and Intercourse Act*[31] also recognizes that Indians have a *commercial right* to hunt, fish and gather not limited to subsistence.

The question in *U.S. v. Brown* was

> whether Congress intended the Lacey Act to apply even to Indians who hold fishing rights that are ***exclusive*** and not shared in common with non-Indians. Certainly, the federal government has the authority to exercise jurisdiction to limit tribe members' fishing and hunting, ***but in order to do so Congress would***

30. 2 *Lewis's Sutherland, Statutory Construction*, 2d Ed., s 491; *Horack's Sutherland, Statutory Construction*, s 4915; *Cohen v. Gould*, 177 Minn. 398, 405, 225 N.W. 435, 438.

31. *Trade and Intercourse Act* of June 30, 1834, c. 161, s 8, 4 Stat. 730.

need to make explicit its intent to abrogate the treaty rights."[32]

When a Chippewa tribal member is exercising their treaty protected usufructuary rights to hunt, fish, trap and gather, they are exercising property rights to be used in whatever fashion the Indians, as owners, desire, whether to eat, clothe, or sell to earn a modest living.[33] Exercising these usufructuary property rights, is self-employment, and exclusive of non-Indians. Here, the taxing of Bibeau's Chippewa self-employment income[34], if exercising exclusive usufructuary rights income from non-Indians would be for the benefit of the non-Indian public, and be an unjust taking in violation of the 5th Amdt.

Consequently, because Chippewa treaty rights are ***not*** shared in common with non-Indians, Chippewa treaty rights to hunt, fish and gather (and reserved rights not relinquished like *tax immunity*) are exclusive from the federal government. A recognized treaty property right to exclusive use of resources across the Chippewa ceded territories, separate from the federal government, and separate from non-Indians, *is a tax immunity* or *tax exemption* for usufructuary self-employment throughout Chippewa's Indian Country.

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32. See *U.S. v Brown*, 2013 WL 6175202, 8, citing *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 594 (1977)(Emphasis added).

33. *United States v. Brown*, 777 F.3d 1025 (2015).

34. By Tax Affidavit for 2016 Bibeau reported self-employment for Leech Lake Res. election dispute in Tribal court and Mille Lacs Band historical Chippewa treaties research. By Tax Aff. for 2017 Bibeau reported representation-legal work for native led environmental protection organization based on White Earth Res. against Line 3 Oil pipeline.

In its May 24, 2023, *Memorandum Opinion* the U.S. Tax Court recognized that Petitioner

> is an enrolled member of the Chippewa tribe who lives and practices law on the Leech Lake Reservation in Minnesota. In a treaty with the United States, the Chippewa kept the right to "hunt, fish, and gather the wild rice" on their traditional lands. Bibeau says this is really the right to "food, clothing and shelter and travel, whereby the new canoe is the automobile." He argues that this means that income from his law practice is tax exempt.[35]

Here, Bibeau is exercising his modernized usufructuary property to earn a modest living in Indian Country, from his home on restricted trust (not fee simple) lands on the Leech Lake Reservation, which rights are exclusive from the federal government and all other non-Indians.

INDIAN CITIZENSHIP ACT OF 1924

The Indian Citizenship Act was signed into law on June 2, 1924.[36] The single-sentence act declares

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all noncitizen Indians born within the territorial

35. See *Bibeau v. Comm. Internal Rev.*, T.C. Memo. 2023-66, Docket No. 11483-20L, Filed May 24, 2023.

36. See Sixty-eighth Congress. Sess. I. Chap. 233 Indians born in U.S. declared citizens, p 253

> limits of the United States be, and they are hereby, declared to be citizens of the United States: *Provided, That* the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.

Federal income taxation[37] of Indians has never been authorized by an Act of Congress, with clear and precise notice to the Tribes and Indians and with due process Congressional hearings about the intent of Congress to authorize federal taxation of all the *Indians not taxed.* This *Indians not taxed* defense, using the *proviso* in the Indian Citizenship Act of 1924 (ICA 1924), is a case of first impression.

The Tax court relies on *Squire v. Capoeman,*[38] which relies on *Choteau v. Burnet,*[39] neither of which cases discuss or consider the Indian Citizenship Act of 1924 (ICA 1924). Petitioner explains how these courts have accepted executive branch demands for deference, in the absence of *clear statutory guidance* and absent express congressional intent of federal taxation, the one-sentence ICA 1924 *sub silentio* inferred or implied a congressional grant of *generally applicable* federal taxation of Indians. Incredibly, taxation of Indians was accomplished by the IRS and courts, without any traditional, basic

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37. Id. Chap 234, Revenue Act of 1924, pp 253-354 (102-page act), the term Indian never mentioned.

38. *Squire v. Capoeman,* 351 U.S. 1, 76 S.Ct. 611, 100 L.Ed. 883 (1956).

39. *Choteau v. Burnet,* 283 U.S. 691, 694-95 (1931).

Congressional due process of notice to the Indians by express words of intent of federal taxation, which would constitutionally require an opportunity for Tribes and Indians to be heard at Congress before deprivation of important and significant property rights, privileges and (tax) immunities.[40]

16TH AMENDMENT

After the 16th Amdt. was adopted the executive branch began to include Indians generally for "incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." The 16th Amendment was not ratified until 1913, and only voted on by State citizens, not Indians. This is taxation without representation of Indians. However, the phrase "excluding Indians not taxed" appears in both Article I and the 14th Amdt. of the U.S. Const., which bookend and parallel the time span of the 44 Chippewa Treaties with the U.S. between 1785 and 1867.

INDIAN COMMERCE CLAUSE

Petitioner agrees that Congress has plenary power under the *Indian* Commerce Clause (U.S. Const., art. 1, § 8, cl. 3) and Treaties are the supreme law of the land. (Id. art. 6.) However, there is no legal basis for imputing a contrary understanding of the ICA 1924 *proviso*, which

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40. See U.S. Const., art. 1, § 8, cl. 3 *Indian Commerce Clause* [The Congress shall have Power . . .] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. See also *plenary power.*

at any rate would constitute an abrogation of an important tax immunity of Treaty Tribe's right by implication. *See, e.g., United States v. Dion*, 476 U.S. 734, 739 (1986) (treaty abrogation requires "clear evidence that Congress **actually considered** the conflict between its intended action on the one hand and Indian treaty rights on the other, and **chose** to resolve the conflict by abrogating the treaty . . . We do not construe statutes as abrogating treaty rights in a 'backhanded way'.")(quoting *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 412 (1968)) (emphases added).

Consequently, when Congress uses its plenary power to modify or abrogate a treaty status, interest, right, privilege, reserved rights or long recognized immunity of/with Indians, Congress has a trust responsibility and due process obligation to give notice of its intentions to the affected Indians' property interests and rights and hold hearings.

Choteau Progeny of Cases

The line of cases that Commissioner cites to show that Indians being made citizens in 1924 was not necessary for the federal government to begin taxing Indians under the *general applicability* of various tax laws included in the scope of the 16th Amdt. *from whatever source derived.* In 1931, the *Choteau*[41] Supreme Court held that a member of the Osage Tribe, holding *certificate of competency* was liable for income tax on his shares of income from tribal mineral (gas & oil) leases under the Revenue Act 1918, §§ 210, 211(a) 213(a), 40 Stat. 1062, 1065; Act June

41. See *Choteau v. Burnet*, 283 U.S. 691, 694-95 (1931).

28, 1906, c. 3572, 34 Stat. 539. The *Choteau* Court looked to the "language of sections 210 and 211(a)[42] subjects the income of 'every individual' to tax. Section 213(a) includes income 'from any source whatever.'[43] The executive branch's *Choteau* brief sought deference from the Court like *Chevron*[44] (but see *Loper infra*). The Court reasoned the Revenue statute was intended to extend tax as far as possible to all species of income[45] without discussing the ICA 1924.

Why did the courts start taxing Indians?

In a different *U.S. v. Brown* 1993 tax case in Ohio, District Judge Spiegel investigated the history of taxing Indians and explained that

> Prior to the Supreme Court's 1931 decision in *Choteau v. Burnet*,[46] (1931), general acts of Congress did not apply to Indians, "unless so expressed as to clearly manifest an intention to include them." See *Elk v. Wilkins*,[47] (1884). Citing *Elk v. Wilkins*, the Tenth Circuit

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42. Id. at 600, citing 40 Stat. 1062.

43. Id. at 693-694 citing 40 Stat. 1065.

44. Id. *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984)

45. Id. Revenue Act 1916, 39 Stat. 756, as amended by Act Oct. 3, 1917, 40 Stat. 300.

46. *Choteau*, 283 U.S. 691, 51 S.Ct. 598, 75 L.Ed. 1353

47. *Elk v Wilkins*, 112 U.S. 94, 100, 5 S.Ct. 41, 44, 28 L.Ed. 643 (1884).

in *Blackbird v. Commissioner of Internal Revenue* held that the respondent Indian was exempt from the federal income tax, observing that "[i]t is well established that general Acts of Congress do not apply to Indians, unless so worded as clearly to manifest an intention to include Indians in their operation."[48]

This rule of statutory construction, the Supreme Court noted almost a generation earlier, had "been recognized for over a hundred years, without exception. . . ." *Choate v. Trapp*[49] (1912). Thus, it had long been held that to apply laws of general application to the Indians, absent explicit language including them, "would be contrary to the almost unbroken policy in dealing with . . . [the] Indian[s]. Whenever they or their interests ha[d] been the subject affected by legislation they ha[d] been named, and their interests specifically dealt with." *Blackbird*, 38 F.2d at 977 (citing *Elk*, 112 U.S. 94, 5 S.Ct. 41).

The Internal Revenue Code states that income tax applies to "every individual" and to "all income from whatever source derived." 26 U.S.C. §§ 1, 61. This clearly makes no specific reference to the Indians. Similarly, the ACT's summons provisions speaks in terms of "any person," with no reference to Indians whatsoever. Thus, under the long standing rule of construction, as one former United States

48. *Blackbird v. Comm. of Internal Revenue*, 38 F.2d 976, 977 (10th Cir.1930) (citing *Elk*, 112 U.S. 94, 5 S.Ct. 41).

49. *Choate v. Trapp*, 224 U.S. 665, 675, 32 S.Ct. 565, 569, 56 L.Ed. 941(1912).

> Attorney General observed, because it has never been the practice to legislate for . . . [the Indians] generally, . . . [and because] no specific reference . . . is made in the [Internal Revenue] Acts . . . the Indians [were] not subject to the Federal income tax laws." 34 Ops. Atty. Gen. 439, 444–45 (1925) (opinion of United States Attorney General John G. Sargent).

The *Brown*[50] Court went onto explain that

> in 1931, however, the United States Supreme Court, virtually without explanation, did what amounted to an "about-face" on statutory interpretation in the area of American Indian law. In *Choteau v. Burnet*, 283 U.S. 691, 51 S.Ct. 598, 75 L.Ed. 1353 (1931), the Supreme Court held that the Internal Revenue Act, a generally applicable act of Congress, applied to Indians. *Id.* at 694, 697, 51 S.Ct. at 600, 601. The Court stated that because the Internal Revenue Act "does not expressly exempt the sort of income here involved, nor a person having petitioner's status [as an Indian] respecting such income . . . " the act applied to Indians. *Id.* at 694, 51 S.Ct. at 600. ***The Court therefore, in one sentence, with neither explanation nor citation, eradicated over a hundred years of statutory interpretation requiring explicit inclusion of Indians***, *see Trapp*, 224 U.S. at 675, 32 S.Ct. at 569, henceforth requiring explicit *exemption* of Indians to free them from the scope of statues of general application. *See Choteau*, 283 U.S. at 693–94, 51 S.Ct. at 599–600; *See also* Jay v. White, *Taxing Those*

50. *United States v. Brown*, 824 F.Supp. 124, 125-126 (Ohio 1993) commenting on *Choteau*.

> *They Found Here* 53–56 (1972) [hereinafter "*White*"].
>
> Regardless of its reasoning, however, the Supreme Court has spoken with abundant clarity in at least one respect. The prevailing rule by which we are bound is that general acts of Congress, including the Internal Revenue Code, apply to Indians unless a statue or a treaty expressly exempts them. *Fed. Power. Comm. v. Tuscarora Indian Nation*, 362 U.S. 99, 115–16, 80 S.Ct. 543, 4 L.Ed.2d 584 (1960); *Superintendent v. Tax Commissioner*, 295 U.S. 418, 420–421, 55 S.Ct. 820, 821–22, 79 L.Ed. 1517 (1935); *Choteau*, 283 U.S. at 693–94, 51 S.Ct. at 599–600;

The *Choteau* Court never mentioned the ICA 1924 because it was not necessary to the existing taxation case of Osage Indians. Here, the *Choteau* Court decides emancipation of Indians instead, without Congress, saying

> [i]t does not follow, however, that [the Indians] cannot be subjected to a federal tax. The intent to exclude must be definitely expressed, where, as here, the general language of the act laying the tax is broad enough to include the subject-matter.[51]

Here, the 1931 *Choteau* Court simply relies on a 1910 certificate of competency for citizenship, a 1906 Act homesteading, 16th Amdt. and 1918 Revenue Act, using *general applicability* concepts for federal taxation of an Indian, before Congress adopted the ICA 1924.

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51. Id. citing *Heiner v. Colonial Trust Co.*, 275 U. S. 232, 48 S. Ct. 65, 72 L. Ed. 256.

INDIANS AND THEIR PROPERTY INTERESTS

Indians and their property interests in *Tuscarora* is exactly what the Congressional ICA 1924 *proviso* was addressing and attempting to protect. The line of federal courts supporting taxing Indians discussed by the *Brown* Court (Ohio D.) above have not been willing to consider the *proviso* half of the single sentence act from a property rights and true plenary power, trust responsibility, due process aspect. This Court needs to determine the *reasonable* meaning and Congressional intent of the ICA 1924 *proviso*, because Congress has not expressly authorized the federal taxation of Indians.

FOND DU LAC V. FRANS

In *FDL v. Frans*[52] (hereinafter *Frans*), *dissenting* Judge Murphy argued the ICA 1924 decoupled taxation from citizenship, which the majority did not support saying it did not create a tax exemption. From a Chippewa treaty rights perspective under *Mille Lacs*[53], *Dion*[54], *Brown*[55] and *Menominee*[56] all those Courts start point

52. See *Fond du Lac Band of Lake Superior Chippewa v Frans*, 649 F.3d 849, 851, (2011) Rehearing and Rehearing En Banc Denied Oct. 13, 2011.

53. *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999)

54. *United States v. Dion*, 476 U.S. 734, 738, 106 S.Ct. 2216, 90 L.Ed.2d 767 (1986)

55. *United States v. Brown*, 2013 WL 6175202 and *United States v. Brown*, 777 F.3d 1025, 1031 (8th Cir. 2015)

56. *Menominee Tribe v. United States*, 391 U.S. 404, 413, 88 S.Ct. 1705, 20 L.Ed.2d 697 (1968).

examination is determining what the Indians understood at the time of treaties. The *Frans* majority missed this Court's important guidance because if citizenship were all that was necessary to give states authority to tax tribal members, the Supreme Court would not have rejected the imposition of state cigarette,[57] personal-property,[58] income,[59] or motor-fuel taxes[60] on tribal members who reside within state borders and within *Indian country.*

This Court needs to review this instant *Bibeau* (following *Frans* holdings) decision in light of this Supreme Court's recent rulings in *Trump v. Anderson*[61] and *Loper*[62] as the 8th Circuit *ignored both.* This June in *Loper*, the Court explained "statutory ambiguity, . . . is not a reliable indicator of actual delegation of discretionary authority to agencies. *Chevron* thus allows agencies to change course even when Congress has given them no power to do so"[63][,] adding "*Chevron* is overruled."[64]

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57. *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 152 (1980).

58. *Id.*; See also *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 477 (1976). See also Bryan v Itasca (1976).

59. *McClanahan v. State Tax Comm'n of Ariz.*, 411 U.S. 164, 93 S.Ct. 1257 (1973)

60. *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 458 (1995).

61. See *Trump v. Anderson*, 601 U.S. — (2024), 144 S.Ct. 662.

62. See *Loper Bright Ent. Et al v. Raimondo, Sec. of Commerce et al* No. 22–451, 603 U.S. — (2024)

63. *Id.* at 33

64. *Id.* at 35

This past March, in *Trump v. Anderson*[65] the Supreme Court held that

> [u]nder the Amendment, States cannot abridge privileges or immunities, deprive persons of life, liberty, or property without due process, deny equal protection [. . .] See Amdt. 14, §§ 1, 2. *On the other hand, the Fourteenth Amendment grants new power to Congress* ***to enforce the provisions of the Amendment against the States.*** It would be incongruous to read this particular Amendment as granting the States the power—*silently no less*—to disqualify a candidate for federal office.[66]

But compare the 8th Circuit *Frans* decision *mistaken use* of the 14th Amdt. because "it would be incongruous to read this particular Amendment as granting the States the power—*silently no less*—to [tax Indians]" without express authorization by Congress "by *appropriate* legislation"[67]. The ICA 1924 is not *appropriate legislation*

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65. See *Trump v. Anderson*, 601 U.S. —, 144 S.Ct. 662, 668 (2024)

66. *Id.* (Emphasis added).

67. See Public Law 280, 28 U.S.C. § 1360. State civil jurisdiction in actions to which Indians are parties, "(b) *Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property*, including water rights, *belonging to any Indian* or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States." See also *Bryan v Itasca County*, 426 US 373, 392 (1976), *Reversing Bryan v. Itasca County*, 303 Minn. 395, 228 N.W.2d 249 (Minn. Mar 28, 1975). (Emphasis added).

about taxation. Consequently, it would also be incongruous to read this particular Amendment as granting the 8th Circuit *Frans* Court the power—silently no less—to give Minnesota a new right to tax on reservation Indians without express Congressional authorization "by appropriate legislation". Consequently, the ICA 1924 does not pass the smell test of expressly authorizing taxation *by appropriate legislation* for the *Frans* Court to grant state taxation, or here now for federal taxation of Petitioner.

The 8th Circuit *Frans* Court and the Tax Court in *Bibeau v. CIR* relied on *Squire v. Capoeman*, 351 U.S. 1, 76 S.Ct. 611, 100 L.Ed. 883 (1956). In 1953, Congress created Public Law 83-280, 28 U.S.C. § 1360 *State Civil Jurisdiction in Actions to which Indians are Parties*, provides in part "[n]othing in this section shall authorize the alienation, encumbrance, *or taxation of any real or personal property*, including water rights, *belonging to any Indian* . . . in Indian Country.[68] Again, much like the ICA 1924, Public Law 83-280(b) denies state taxation *of any real or personal property* for on reservation income. See *Bryan v. Itasca County, Minn.*[69] The *Bryan* Court deciding and explaining that the State of Minnesota and Itasca county lacked authority under Pub.L. 83-280 to impose a personal property tax on Bryan's mobile home located on land held in trust for members of his tribe on the Leech Lake Reservation, because that imposition of such a tax contravened federal law. Like Bryan, Bibeau's

68. Id. *See also* 18 U.S.C. § 1162, 25 U.S.C. § 1322(b), and 25 U.S.C. § 1321(b).

69. See *Bryan v. Itasca County*, 426 U.S. 373 (1976) Held: *Public Law 280* did not grant States the authority to impose taxes on reservation Indians. 426 U. S. 379-393

home with his law office is *located on land held in trust for members of his tribe on the Leech Lake Reservation.*

The 8th Circuit *Frans* majority *comments*[70] that the

> *dissent* emphasizes this [8th Circuit] court's observation that reservation-residing Native Americans are not subject to "municipal civil regulatory control." *Shakopee Mdewakanton Sioux Cmty.*, 771 F.2d at 1157, citing *Bryan v. Itasca County, Minn.*, 426 U.S. 373, 388, 96 S.Ct. 2102, 48 L.Ed.2d 710 (1976) (reservation Native Americans are not subject to "the full panoply of civil regulatory powers . . . of state and local governments") (footnote omitted).

Here, the majority declares the *Frans* "case involves the narrow question *whether the State may tax a reservation Indian for income earned exclusively on the reservation.*"[71] This would also be the description of the Supreme Court's decision in *Bryan v. Itasca* (1976). However, Petitioner Bibeau distinguishes his self-employment income, as a Tribal attorney working with intramural, tribal cultural and resource issues *is* Bibeau's method of earning a modest living from a *modernized* exercising of treaty protected usufructuary rights across Indian Country from restricted trust lands on the Leech Lake Reservation, like in *Bryan.*

Despite that lack of express congressional intent, guidance and authorization, federal courts have held Indians are taxable before Congress adopted the ICA

70. See *Frans*, FN 5.

71. *Id.* at 852.

1924. The *Frans* Court decided that "because citizenship provides a constitutional nexus, Minnesota's taxation complies with due process" under the 14th Amdt.[72] The ICA 1924 was not briefed by the *Frans* parties for the 8th Circuit, instead citizenship was argued by the divided panel.

1924 PROVISO

Most important for the due process rights of Indian's is that the line of cases including and following the *Choteau* Court have all failed to interpret the 1924 Act's *Proviso*, itself, *before presuming citizenship* or the *so-called silence* grants Congressional guidance for federal taxation of Indians. The Commissioner argues the Indians need a specific, express *tax exemption* from the same Congress, that silently, never gave notice of intent to tax Indians. Congress was silent about taxation and everything else in 1924, *except* the ICA included an important *proviso* that has been ignored and not been interpreted appropriately by this Court.

The *proviso* creates a new, express statutory *due process* property right protection, with very clear, express congressional intent which "Provided, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property."[73] *Other property* in

72. See *Fond du Lac Band of Lake Superior Chippewa v Frans*, 649 F.3d 849, 851, (2011) Rehearing and Rehearing En Banc Denied Oct. 13, 2011.

73. See *Indian Citizenship Act* of 1924, ch. 233, 43 Stat. 253 *current version codified* as 8 U.S.C. § 1401(b).

the case of Petitioner includes a tax immunity property right historically held by the Chippewas. Tribal nation tax immunity recognition was *mutually understood and extended* by the parties *as nations*, several times in Treaties with the Chippewa.[74]

5TH AMENDMENT DUE PROCESS

Exercising plenary power under the Indian Commerce clause of the U.S. Constitution requires due process *notice* and *opportunity to be heard* when a tribal, tax immunity, tribal property right is being modified or abrogated because all 44 Chippewa Treaties with the United States were ratified by 1867, which means the 5th Amdt. due process should be applied. The 5th Amdt. provides that *no person* shall be "deprived of life, liberty or property without due process of law." The term "no person" includes Indians and Petitioner after the ICA 1924. The 5th Amdt. makes no reference to *Indians not taxed* and protects against unjust taking of *private* (tribal or other) *property* for public use, without just compensation.

The actual **due process** required between Congress exercising plenary power and trust responsibility, and Indians and Tribes with treaties and various rights, privileges and immunities under the Indian Commerce Clause of the United States Constitution *requires* ***actual notice*** *of the intended legislative impacts*, like federal taxation, to the affected Indians and Tribes and **opportunity to be heard**, at Congress before deprivations

74. See 1837 Treaty with the Chippewa contains four (4) references to Chippewa nations and 1825 Treaty Chippewa signatory *1st chief of the Chippewa nation*, Saulte St. Marie.)

of property rights and interests.[75] Moreover, "[t]he Supreme Court has made clear that if there is a treaty right that protects the relevant conduct, the question is whether Congress has abrogated that right, not whether the right has specifically exempted the party to the treaty from an Act that would otherwise generally apply."[76] The ICA 1924 was not an Act of *general applicability* on its face because (1) the Act applies only to Indians, and (2) the Act contains a *proviso* for *when citizenship should not be used as a status to impair tribal and other property.*

The express *due process required* proviso part of the ICA 1924 clearly states "under this subsection shall not in any manner impair or otherwise affect the right of such person to *tribal or other property.*" (Emphasis added). This *proviso* part of the ICA 1924 has not been reasonably examined nor explained and therefore not fairly considered, by any court, including this *Frans* majority. The majority in *Frans* used the 14th Amdt. *due process nexus* to the *citizenship act* to get for taxation of Indians, without first initiating a congressional 5th Amdt. *due process subsection required* (*proviso*) proceeding on the potential impacts or impairments of citizenship Indian, before unreasonably inferring state taxation is now required of Indians *by appropriate legislation.*[77] Taxation of Indians, especially by a state is not what Congress intended in 1924, 1953 or 1868 (14th Amdt.).

These tax immunity property rights are too important to be abrogated by implication, inference and absent

75. See *Dion*, 476 U.S. at 737–40

76. Id. including silent or reserved rights

77. See *Frans* majority at 851.

clearly expressed intentions of Congress explaining why it is necessary, and if abrogating a property right, to compensate the taking. This Court can correct the "property principles subject to constitutional protections, [as] a starting place for a treaty jurisprudence that makes use of property-based legal concepts to empower those without power in the way that *Goldberg v. Kelly*[78] property-based jurisprudence brought power to those who had only an "expectation interest" in continuing to receive government benefits, at another time in history."[79]

CONCLUSION

The federal taxation of Indians has not been authorized by an express act of Congress, silence is not consent. Petitioner asks this Court to reverse the ruling of the Tax Court below and find that Congress never authorized the federal taxation of the income of Indians; or, in the alternative, to find that federal taxing authority cannot tax income derived from specific, treaty-protected activities.

As Erlinder's Chippewa Treaty analysis explains

> In *Minnesota v. Mille Lacs Band of Chippewa Indians*,[80] the U.S. Supreme Court unanimously

78. *Erlinder* 2015 Conclusion, 227-228 citing *Goldberg v. Kelly* 397 U.S. 254 (1970). In *Goldberg v. Kelly*, the Supreme Court ruled that the Due Process Clause of the Fourteenth Amendment requires an evidentiary hearing before a recipient of government benefits can be deprived of those benefits.

79. *Id.*

80. See *Treaty-Guaranteed Usufructuary Rights: Minnesota v. Mille Lacs Band of Chippewa Indians Ten Years On*, by Peter

> held that, by guaranteeing Anishinabe (Chippewa) rights to hunt, fish, and gather in the first portion of Minnesota territory ceded to the United States in 1837, U.S. treaty negotiators severed the right to *use* the land, a concept known as usufructuary property rights since Roman times,[81] from formal title to the land.[82] And, by so doing, the U.S. government vested the Anishinabe with treaty-guaranteed off-reservation usufructuary rights that could not be lawfully taken from them without congressional authorization,[83] either in a treaty or legislation, expressed in language understood as such a taking by the Anishinabe.

Petitioner is exercising his exclusive, treaty protected usufructuary rights to earn a modest living, living on trust lands on the Leech Lake Reservation, working on intramural, environmental and cultural issues for the benefit of the Tribe and members.

Erlinder, (2011), citing *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 175, 29 ELR 20557 (1999).

81. Id. Usufruct, n. [fr. Latin usufructus] Roman & civil law. A right to use and enjoy the fruits of another's property for a period without damaging or diminishing it, although the property might naturally deteriorate over time. . . . La. Civ. Code art. 535. Usufructuary, n. Roman & civil law. One having the right to a usufruct; specif. a person who has the right to the benefits of another's property. 1 C.J.S. Estates §§2-5, 8, 15-21, 116-28, 137, 243.

82. Id. See generally *Recognizing and Protecting Native American Treaty Usufructs in the Supreme Court: The Mille Lacs Case*, 21 Pub. Land & Resources L. Rev. 169 (2000).

83. Id. *United States v. Dion*, 476 U.S. 734, 16 ELR 20676 (1986).

Respectfully submitted,

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