No. 24-804

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

BRIEF OF AMICUS CURIAE SAUK-SUIATTLE INDIAN TRIBE IN SUPPORT OF PETITIONER SEEKING GRANT OF CERTIORARI

JACK WARREN FIANDER
Counsel of Record
DILLON LOUIS SPIESS
5318 Chief Brown Lane
Darrington, WA 98241
(360) 436-0139
jfiander@sauk-suiattle.com

Counsel for Amicus Curiae

120290

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

May the Commissioner of Internal Revenue, apply a federal income tax to sums paid to an enrolled Chippewa member performing labor for the Chippewa Tribe on the tribe's reservation and lands within which the Chippewa hold treaty rights where there is an express exemption from taxation in a treaty signed by the Chippewa stating they would not be subject to a tax of any kind, where application of the tax constitutes taxing an activity the United States expressly required the Chippewa to perform in the treaty, and where nothing is in the Fourteenth or Sixteenth Amendment nor in any federal statute authorizing application of a tax.

TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases:

Cited Authorities

Cited Authorities

Other Authorities:

Cited Authorities

Page

INTEREST OF THE AMICUS CURIAE[1]

Amicus Curiae is a federally recognized sovereign tribal Nation and a signatory to the 1855 Treaty of Point Elliott, 12 Stat. 927 (1859), with the United States. *Amicus* is situated similarly to petitioner, whose homeland, or reservation, is the result of a Treaty with the United States.

In the Treaty, the Sauk-Suiattle, then known as the Sah-ku-mehu, and other tribes and bands ceded millions of acres of their territory to the United States and it was agreed that reservations they would remove to certain homelands reserved from the cession denominated as reservations. In return, the United States agreed to provide the means necessary for the Indians to become self-sustaining within such reservations.[2]

---

1. All parties have been timely notified.

2. As stated in the Point Elliott Treaty:

> The United States further agree to establish at the general agency for the district of Puget's Sound, within one year from the ratification hereof, and to support for a period of twenty years, *an agricultural and industrial school, to be free to children of the said tribes and bands* in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or instructors, *and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a blacksmith, carpenter, and farmer* for the like term of twenty years to instruct the Indians in their respective occupations.

(Emphasis added).

Similar provisions appear in the 1855 Treaty with the Chippewa.[3]

Basically, the provisions of the 1855 Treaty with the Sauk-Suiattle and those in the 1855 Treaty with the Chippewa regarding the promotion of Indian labor are similar. Consequently, *amicus curiae* is similarly situated to petitioner.

INTRODUCTION

In the earliest days of our Republic, federal courts understood that federal laws could not apply to Indians in Indian Country. Beginning in 1885, however, this Court began experimenting with a radically different approach, judicially vesting the federal government with seemingly unlimited power over separate sovereigns which was not apparent in the Constitution. *See United v. Kagama*, 118 U.S. 375 (1885). Applying this new approach, judges began rewriting history. *See Lone Wolf v. Hitchcock*, 118 U.S. 553 (1903). With time, the error of this approach has become widely recognized.

Today, courts across this country continue to struggle with this Court's conflicting legal doctrines. Nowhere is

---

3. "The Mississippi bands have expressed a desire to be permitted to employ their own farmers, mechanics, and teachers; and it is therefore agreed that the amounts to which they are now entitled, under former treaties, *for purposes of education, for blacksmiths and assistants, shops, tools, iron and steel, and for the employment of farmers and carpenters*, shall be paid over to them as their annuities are paid[.]" Treaty with the Chippewa 1817 (emphasis added).

this conflict more apparent than when it comes to taxes.[4] This case presents an ideal vehicle to return to the original principles governing the relations of tribal nations with the United States in the Constitution.

Congress has never abrogated tribal tax immunity.[5] Nevertheless, the Eighth Circuit maintains that Indians are just like all Americans; and are thus, "subject to federal incomes taxes unless a specific law or treaty provides otherwise." History says otherwise. As settlers set out across Atlantic, they brought with them their own set of legal principles. Experienced colonizers, the British,

---

4. *Cherokee Tobacco*, 73 U.S. (11 Wall.) (1870, overruled by *United States v. Forty-Three Gallons of Whiskey; The Kansas Indians*, 72 U.S. (5 Wall) 737 (1867); *Choate v. Trapp*, 244 U.S. 665); *Ward v. Board of County Commr's of Love County*, 253 U.S. 17 (1920); *Board of County Commissioner v. Seber*, 318 U.S. 705 (1943); *Choteau v. Burnett*, 283 U.S. 691 (1931); *Five Civilized Tribes v. Commissioner*, 295 U.S. (1935); *Squire v. Caopeman*, 351 U.S. 1 (1956); *Warren Trading Post v. Arizona Tax Comm'n*, 380 U.S. 685 (1965); *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251 (1992), overruled by *Upper Skagit v. Lundgren*, 584 U.S. 554 (2018); *Moe v. Salish Kootenai Tribe*, 425 U.S. 463 (1978); *Mescalero Apache v. Jones*, 411 U.S. (1973); *Washington v. Confederated Tribes of Colville Indians*, 447 U.S. (1980); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982); *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989); *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505 (1991).

5. The word "exemption" often denotes a right to be free from taxation which exists because it has been granted by a sovereign. Accordingly, when referring to tribal taxes be more accurate to use the word "immunity." In any event, the term "exemption" has been defined to include "immunity," from a "general from a general burden, tax, or charge." Blacks Law Dictionary 681, 885 (4th ed. 1951).

were no strangers to *The Law of Nations*. Guided by international law, the British began entering to treaties with tribal Nations across North America. Under this arrangement—much like the "tributary" and "feudatory" states of Europe—tribes remained "sovereign and independent" with the "exclusive" right to govern their internal affairs. *See*, E. de Vattel, *The Law of Nations*, 60-61; *see also*, *Worcester v. Georgia*, 6 Pet. 615 (1832).

Following the Seven Year War—and its North American counterpart, the French and Indian War—Britain, strapped for cash, began taxing the colonists. In the eyes of the colonists, these taxes were illegal. Consequently, in 1776, the colonies—called to arms by the rallying cry "No Taxation Without Representation"—banded together and declared Independence.

After the Revolutionary War, the colonies emerged as independent states under the Articles of Confederacy. Under the Articles each State was "considered themselves to be fully sovereign." *Franchise Tax Bd. Of Cal v. Hyat*, 587 U.S. 230, 248 (2019). Accordingly, like tribes they were entitled "to all the rights and powers of a sovereign state" under international law. *Mcllvaine v. Coxe's Lessee*, 4 Cranch 209, 212 (1808).

But with time, this arrangement proved unworkable. Unable to impose taxes, the central government often relied on contributions from the states. But as expenses outpaced the contributions, the young nation convened to come up with a solution.

In 1787, representatives from across the former colonies gathered to come up with a solution. Well versed in "international law," *Franchise Tax Board*, and acutely

aware of the issues of taxation, the Founders agreed that the federal government's power to impose direct taxes would be based on representatives "apportioned among the several states." U.S. Const. Art, I, §9, cl. 4, "excluding Indians not taxed." Art. I, §2, cl. 3. The Nation's first federal income tax was enacted in 1861 to pay for the costs of the Civil War. However, in 1895, the Court struck down a major portion of the 1861 tax. The Supreme Court held in *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895), that the provisions for a tax on property were invalid.

In 1913, in response to *Pollock*, the States and Congress ratified the Sixteenth Amendment. Immediately, thereafter, Congress enacted the Internal Revenue Code. Since then the Code has been multiple times.

Ultimately, it was not until 1924—eight years *after* the Sixteenth Amendment was ratified—that Indians even became citizens. Tribal members are not like all other Americans. They are members of a preexisting sovereign. And as members of a preexisting they also have property rights governed by contracts with the United States.

Tribal members were not considered "people" until 1924.[6] They were not citizens at the time the Constitution was ratified or when the Sixteenth Amendment was ratified. The Constitution expressly excludes tribal members from taxation. Unlike states, tribal Nations never surrendered their sovereignty. To the contrary, they expressly preserved it. How can it be said that United States, which never had original sovereignty over tribal members, can impose a tax upon tribal citizens?

6. Sixty-eighth Cong., Sess. 1, Ch. 233.

STATEMENT OF THE CASE

Amicus curiae incorporates by reference the Statement of the Case of Petitioner Frank Bibeau, an enrolled member of the Chippewa tribe who is employed by his tribe 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 incurred a tax liability for 2016 and 2017 $6,000. He has never paid this tax debt. The services he was paid for involved researching protection of tribal natural resources for hunting, fishing and gathering rights and for serving as an Election Judge and representing the tribe in election disputes in the tribe's court.

SUMMARY OF ARGUMENT

The United States engaged in not less than 44 treaties with the Chippewa. In one of the first ones, the 1817 Treaty with various tribes and bands of the Chippewa, the United States, in consideration of the cession millions of acres of Chippewa lands, agreed to set aside certain tracts which "shall not be liable to taxes of any kind so long as such land continues the property of the said Indians." Subsequent, more detailed treaties with the Chippewa, did not abrogate the 1817 treaty. Rather, in them the United States bargained for the cession of described Chippewa lands and relocated its tribes and bands to discrete tracts distant from white settlement.[7]

---

7. Congress "renegotiated" the terms of their agreement more than once. But none of the 44 treaties that followed expressly abrogated the terms of the 1817 Treaty. Nevertheless, the Eighth

Subsequent treaties, sought to promote industrialism among the Chippewa and encourage their engagement in labors similar to those engaged in by their nontribal neighbors. The 1837 and 1855 Treaties with the Chippewa, for example, in consideration of additional land cessions and promises by the Chippewa, provided that the United States would provide such things as blacksmith shops, iron and steel, seed and grain for farmers "with implements of labor," and "and whatever else may be necessary to enable them to carry on their agricultural pursuits."

In short, the United States agreed to pave the way for the Chippewa to engage in *labor* within their reservation, promised to provide the means and education for doing so, and the Chippewa accepted those terms in the treaty expressing their intent to be taught in labor as a means of self-sufficiency in return for relinquishing their lands. Consequently, application of the federal income tax to income earned from the labor of a Chippewa working for his or her tribe on their reservation as the United States and the Chippewa promised to engage in constitutes taxation of an activity which both parties to the treaty agreed was a provision agreed to. The United States, then, is taxing the very activity the United States required as a term of the treaty and which the Chippewa promised to perform according to the Treaty.

The current court-created doctrine regarding the applicability of federal taxes and regulations to reservation Indians is that federal laws of "general applicability"

Circuit finds that tribal members are just like all Americans and are therefore "subject to federal tax law unless a specific law or treaty provides otherwise."

apply to Tribes unless: (a) there is an express exemption in the federal statute; (b) application of the law infringes upon the internal or social relations of the tribe; or (c) application of the tax or regulation conflicts with a treaty.

This case is distinguishable from recent cases holding that federal tax laws of general applicability apply to reservations unless there existed an "express" exemption from a tax in the treaty. Neither party to the Treaties with the Chippewa could have contemplated the need to put an express exemption from federal income taxation in the Chippewa treaties because *no such tax even existed at the time of the treaty.* The first federal income tax was not enacted by the United States Congress until 1861 and, presumably, could not have extended to tribal nations who were not citizens of the United States.

Finally, as argued in the petition of petitioner, neither the Constitution, Fourteenth or Sixteenth Amendment nor the 1913 or 1924 Indian Citizenship Acts can be read as authorizing application of federal income taxes to the labor performed by reservation Indians working for their own tribe consistent with their treaty rights.

ARGUMENT

Leaving tribal nations free from taxation is deeply rooted in our nation's history. The Constitutional founders, in acknowledgment that the Indian nations were not subject to taxation entered treaties with the Chippewa providing they were not, and no plain text of Constitutional Amendment nor Congressional Act can be read as authorizing such taxation.

After the Revolutionary War for independence, the Framers, who were "well versed in international law" recognized that tribal citizens were members of another of sovereign.. *Franchise Tax Bd. of Cal v. Hyatt*, 587 U.S. 230, 238-239; *see, e.g.* U.S. Const. Art II, §2, cl. 2.; Art I, §8, cl.3. Specifically, the Framers, agreed that the lower branch—which is responsible for all bills related to revenue, Art I, §7 cl. 1—would be "apportioned among the several states, Art. I §9, cl. 4 "*excluding* Indians not taxed." Art. I, §2 cl 3. (emphasis added).

Acting Solicitor John P. McDowell was asked by Assistant Secretary of Interior John Edwards "as to whether the income of Tom Pavatea, an Indian of the Hopi Tribe, Arizona, and other Indians in a like situation, is subject to an income tax under our Internal Revenue laws."[8] McDowell concluded that:

> The income here in question accruing to Tom Pavatea was derived from sources almost entirely, if not exclusively, within the reservation set apart for the use of the tribe of which he is a member, and for the reasons

8. Solicitor McDowell's opinion can be found at https://thorpe.law.ou.edu/sol_opinions/p126-150.html#m-17187

> herein given I am of the opinion that such income is not taxable under existing Internal Revenue law.

Opinions of the Solicitor, 51 I.D. 326, No. M-17187 (Jan. 20, 1926). As another Solicitor of Interior later put it:

> The apparent intention of the [constitutional] convention was that representative in the lower branch of Congress be a apportioned according to the number of people who constituted the community of people of the United States....Indians [as] members of a sovereign were outside the community of people the United States.

Opinion of the Solicitor, 57 I.D. 195, 197 (1940). (emphasis added). Thus, the Solicitor reasoned that even though tribal members were located within the boundaries of the United States, "their exclusion from the constitutional framework at the time of its adopt[ion] exempted tribal members from federal taxation." Id.

The opinion of the Solicitors is consistent with that of the Senate Judiciary Committee. When reporting to Congress regarding the effect of enactment of the Fourteenth Amendment upon Indian tribes in 1871, the Committee found that it was "universally recognized" that tribal members by, and having treaties with, the United States were exempt "from the operation or our laws and the jurisdiction of our court."[9]

---

9. U.S. Senate, Committee on the Judiciary, "The Effect of the Fourteenth Amendment on Indians Tribes," Senate Report No. 268, 41st Congress, 3d session (Washington, D.C.: Government Printing Office, 1871).

As they put it:[10]

> To maintain that the United States, by change of its fundamental law, which was *not ratified* by these tribes, and to which they were *neither requested nor permitted to assent*, to annul treaties then existing between the United State, and Indian tribes as the other perspective, would charge upon the United state repudiation of [its] nations obligations.

Consequently, the report concluded that the phrase dealing with jurisdiction specifically intended to exempt Indians from direct taxation.

Not only did early treaties with the Chippewa express a tax exemption, they unequivocally appear to have been intended to promote labor among the Chippewa.[11] In the 1826 Treaty with the Chippewa, the United Sates agreed to establish a fund for the education of the Chippewa, "In consideration of the poverty of the Chippewas, and of the sterile nature of the country they inhabit, unfit for cultivation, and almost destitute of game, and as a proof

---

10. *Id.*

11. "In consideration of the cession aforesaid, the United States agree to make to the Chippewa nation, annually, for the term of twenty years, from the date of the ratification of this treaty, the following payments. Three thousand dollars for establishing three blacksmiths shops, supporting the blacksmiths, and furnishing them with iron and steel. One thousand dollars for farmers, and for supplying them and the Indians, with implements of labor, with grain or seed; and whatever else may be necessary to enable them to carry on their agricultural pursuits." Treaty with the Chippewa, 1837, Article 2.

of regard on the part of the United States[.]" Article 5. In Article 2 of the September 29, 1817 Treaty between the United States and the Chippewa and other tribes, the Pottawatomie, Ottowa and Chippewa ceded vast acreages of their homeland to the United States and, in Article 15:[12]

> 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.

Id.

Treaties are the Supreme Law of the Nation. Neither the 1817 Treaty with the Chippeawa nor any subsequent treaty or act of Congress has abrogated the treaty right claimed by petitioner Bibeau.

"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

12. 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

of the Indians[.]" *United States v. Brown*, 777 F.3d 1025, 1031 (8th Cir. 2015) (citing *Mille Lacs*, 526 U.S. at 200). 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).

In the earliest days of our Republic, the Court, often recognizing the delicate balance between the two nations, was very careful to defer to the political branch to resolve any issues that may arise involving Indians in Indian Country. *See, e.g., Brown v. United States* 8 Cranch 110, 129 (1814) (Marshall, C.J., for the Court); *The Kansas Indians*, ; *United States v. Rogers*, ; *Fellows v. Blacksmith*, ; *United States v. Holliday.* After all, they are confined to "interpreting" treaties, rather abrogating them.

The current Internal Revenue Code states that income tax applies to "every individual" and to "all income from whatever source derived."[13] Similarly, other provisions of the Code speak in terms of "any person." This appears irreconcilable with the 1817 treaty with the Chippewa. *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).

---

13. 26 U.S.C. §§ 1, 61.

The Supreme Court has said that the prevailing rule by which we are bound is that general acts of Congress, apply to Indians unless a statue or a treaty expressly exempts them.[14] *Fed. Power. Comm. v. Tuscarora Indian Nation*, 362 U.S. 99, 115–16, 80 S.Ct. 543, 4 L.Ed.2d 584 (1960). But whether there is an express exemption is just one of a three-part test, and whether an exemption is "express" need not be couched in terms of federal taxation.

There is no express exemption for tribes in Title 26 of the United States Code *statutes*, but language in a *treaty*, construed in favor of a tribe, can be considered an "express exemption." See *Ramsey v. United States*, 302 F.3d 1074 (9th Cir. 2002):

> The applicability of a federal tax to Indians depends on whether express exemptive language exists within the text of the statute or treaty. The language need not explicitly state that Indians are exempt from the specific tax at issue; it must only provide evidence of the federal government's intent to exempt Indians from taxation. Treaty language such as "free

14. The courts have legislated a test that laws of general applicability apply to tribes unless (1) there is an express exemption in the federal statute, (2) application of the federal law intrudes on internal tribal social relations, or (3) conflicts with treaty rights. The test is in *Lumber Industry Pension Council v. Warm Springs Forest Products*, 730 F. Supp. 324 (E.D. Cal. 1990). The federal *bankruptcy* act, an act of general applicability, applied to tribes in *Lac du Flabeau v. Coughlin* because none of the three factors was involved and tribes fell within the definition of governmental unit in the *bankruptcy* act. __ U.S. __, 143 S. Ct. 1689 (2023). However, as to the federal *income tax*, the federal income tax code statutes are silent.

> from incumbrance," "free from taxation," and "free from fees," are but some examples of express exemptive language required to find Indians exempt from federal tax.

In *Ramsey* and *Couer d'Alene Tribal Farm v. Donovan*, 751 F.2d 1113 (9th Cir. 1985) there was no treaty exemption or treaty language whose ambiguity could be construed as an exemption. The 1817 Chippewa Treaty, however, has an exemption. Neither that or any other Chippewa treaty would have been understood by the Indians[15] as subjecting them to federal income tax at the time of the treaties because there was no such thing as a federal income tax until 1861 when Congress passed the short-lived Revenue Act of 1861 which was later repealed in 1872—which was *after* the Chippewa treaties were executed, so it could not have been understood as possibly applicable at treaty-time.[16]

Article 10 of the 1817 treaty with the Chippewa provided *inter alia* that a superintendent or agent shall be employed to teach Indians in the industries such as blacksmithing or running a grist-mill. This is saying under the treaty the Indians agreed by treaty to learn about and to perform "labor." It is taxing a treaty right.

Treaties which are similar to the Chippewa treaties have been held to not require or limit the tribes to

---

15. *See, United States v. Winans*, 198 U.S. 371 (1905).

16. Nor can the Sixteenth Amendment, ratified in 1913, be reasonably read as subjecting Indians to taxation. Tribal Indians were not citizens of the United States until enactment of the Indian Citizenship Act of 1924. Sixty-eighth Congress. Sess. I. Chap. 233 (Indians born in U.S. declared citizens), p. 253

exercising their treaty rights in manners that existed only at the time of the treaty such exercising treaty-reserved hunting rights only with bows and arrows or fishing only with nets made out of hemp. *United States v. Washington*, 384 F. Supp. 312, 407 (W.D. Wash. 1974), *affirmed* 520 F. 2d 676 (1975), *cert. denied*, 423 U.S. 1086 (1976). This is pertinent because Frank W. Bibeau may not be earning pay from his tribe for performing labor as a blacksmith or growing grain but, rather, as a professional attorney, he is still being taxed for engaging in treaty-rights-related activities.

REASONS FOR GRANTING THE WRIT

The principle of leaving Indian tribes free from taxation is deeply rooted in our nation's history. Notwithstanding that nothing in the plain text of the Constitution, nothing in the Fourteenth nor Sixteenth Amendments, and nothing in the 1913 Citizenship Act or the 1924 act extending citizenship to Indians—nor the Internal Revenue Service Code—can be read as expressing intent to tax the income of Indians paid for working for their own tribe in Indian Country, the courts have once again fashioned an artificial penumbra of such authority. This case presents an ideal vehicle to return to the original constraints on the authority of the United States over Indians in Indian Country in the Constitution.

In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ___, No. 19-1392 (June 24, 2022), this Court noted that historical inquiries are essential whenever the Court is asked to review the constitutionality of a law. In *Dobbs*, the Court determined that, since the Constitution made no express reference to the right claimed, the party

asserting it—in this case the Commissioner of Internal Revenue Service—must show that the right is somehow implicit in the constitutional text. In this case, leaving reservation Indians free from taxation is deeply rooted in our nation's history. Nevertheless, the Government claims the right to impose such taxes upon petitioner in the absence of such authority in the text of the Constitution or in any a statute by cobbling together an assemblage of vague phrases such as plenary authority, domestic dependency, or regulating commerce[17] with the Indians. In *Dobbs*, the Court unequivocally held that assembling such multiple phrases in support of an *implied* right which does not appear in the constitutional text fails to meet constitutional muster, just as it does in this case.

The writ sought by petitioner should also be granted in order to bring decisions of the Circuit courts of appeal in conformity with Constitutional intent. Both the 8th Circuit in this case, and the 9th Circuit in *Ramsey*, in an effort to extend *Squire v. Capoeman*[18] beyond its facts, have legislated a court-created test requiring that in order for an Indian treaty or statute to provide an exemption

17. As stated in *Adoptive Couple v. Baby Girl*, 570 U.S. 637 (2013), "the Clause does not give Congress the power to regulate commerce with all Indian persons any more than the Foreign Commerce Clause gives Congress the power to regulate commerce with all foreign nationals traveling within the United States. A straightforward reading of the text, thus, confirms that Congress may only regulate commercial interactions—'commerce'—taking place with established Indian communities—'tribes.' That power is far from 'plenary.'" (Thomas, J., concurring).

18. In *Squire v. Capoeman*, 351 U.S. 1 (1956), the court held that, for an Indian tax exemption to be recognized it need not be "expressly couched in terms of nontaxability."

from federal taxation there must be express language appearing in text exempting tribes from such taxes.

In the late Nineteenth Century, the courts of this nation took it upon themselves to depart from the Founders' intentions regarding the relationship of the United States with tribal nations, resulting in judicial amendment of the Constitution and Congressional acts which make no mention of them. As was correctly stated in *Loper Bright Enterprises v. Raimondo*, ___ U.S. ___, No. 22-451 (June 28, 2024), the weight to given to prior decisions depends "upon the quality of its reasoning, its consistency with related decisions, its workability, and reliance interests that have formed around it" (Gorsuch, J., concurring):

> The first factor recognizes that the primary power of any precedent lies in its power to persuade—and poorly reasoned decisions may not provide reliable evidence of the law's meaning. The second factor reflects the fact that a precedent is more likely to be correct and worth of respect when it reflects the time-tested wisdom of generations than when it sits unmoored from surrounding law.

Id. Generations ago, at a Constitutional Convention, the originators of the United States Constitution exercising the wisdom of Elders determined that taxes were not to be applied to tribal nations in their territory since, by agreeing to make peace, learn new ways, and convey millions of acres of lands to enable expansion of this Nation, they have surrendered an amount which far exceeds what might have been required as taxes.

CONCLUSION

The federal taxation of Chippewa Indians under the specific facts of this case has not been authorized by an express act of Congress. Petitioner asks this Court to grant review for the purpose of allowing this court the opportunity to thoroughly review the ruling of the Circuit 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 arising from a treaty in which the United States can be deemed to have bargained for a cession from the Chippewa of millions of acres of land as payment in lieu of taxes to the United States for as long as the rivers in their territory shall flow.

Amicus Curiae respectfully urges the Court to *grant* the petition.

Respectfully submitted,

JACK WARREN FIANDER
Counsel of Record
DILLON LOUIS SPIESS
5318 Chief Brown Lane
Darrington, WA 98241
(360) 436-0139
jfiander@sauk-suiattle.com

Counsel for Amicus Curiae