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**OFFICE OF
APPELLATE COURTS**

Todd Jeremy Thompson,

Appellant,

vs.

State of Minnesota,

Respondent.

Brief of Amicus Curiae

Of the 1855 Treaty Authority

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INTRODUCTION

1855 Treaty Authority.

The 1855 Treaty Authority adopted Resolution 2014-001 on March 22, 2014, which formally recognized as the “1855 Treaty Authority, LLC” through the White Earth Limited Liability Code.¹ The White Earth Band of Chippewa Indians adopted the *Ceded Territory Conservation Code of the 1855 Treaty Tribes* by Resolution 057-10-008 on May 13, 2010. The Leech Lake Band of Ojibwe adopted the same *Ceded Territory Conservation Code of the 1855 Treaty Tribes* by LLBO Resolution 2011-100 on Jan. 28, 2011. The signatory Bands to the 1855 Treaty have reserved hunting, fishing, gathering and resource management rights and responsibilities in the 1855 Treaty ceded territory.

Chippewa, Ojibwe and Anishinabe.

The Chippewa, also known as the Ojibway, Ojibwe, and Anishinaabe, are one of the largest and most powerful nations in North America, having nearly 150 different bands throughout their original homeland in the northern United States — primarily Minnesota, Wisconsin, and Michigan; and southern Canada — especially Ontario, Manitoba, and Saskatchewan.² The Chippewa have 44 Treaties with the

¹ Pursuant to Rule 129.03 Certification in Brief, no counsel, for either party, authored the amicus brief in whole or in part. Nor has any person or entity, other than the amicus curiae, members, or its counsel, made a monetary contribution to the preparation or submission of the brief.

² See *Chippewa – People of the Great Lakes*, Compiled by Kathy Alexander/Legends of America, updated March 2023. <https://www.legendsofamerica.com/na-chippewa/>

United States beginning in 1785 and ending in 1867, with the Treaty that created White Earth reservation, a second relocation reservation for the Chippewas of the Mississippi. There are seven federally recognized Chippewa or Anishinabe Reservations in Minnesota.

The seven Anishinaabe reservations include: Grand Portage located in the northeast corner of the state; Bois Forte located in extreme northern Minnesota; Red Lake located in extreme northern Minnesota west of Bois Forte; White Earth located in northwestern Minnesota; Leech Lake located in the north central portion of the state; Fond du Lac located in northeast Minnesota west of the city of Duluth; and Mille Lacs located in the central part of the state, south and east of Brainerd.

All seven Anishinaabe reservations in Minnesota were originally established by treaty and are considered separate and distinct nations by the United States government.³

Tobacco.

Tobacco is the first plant that the Creator gave to Native people. It is the primary activator of all the plant spirits. Three other plants, sage, cedar, and sweetgrass, follow tobacco, and together they are referred to as the four sacred medicines.⁴ Traditional people say that tobacco is always first. It is used as an offering for everything and in every ceremony.⁵

³ See *Tribal Nations in Minnesota*, <https://mn.gov/indian-affairs/tribal-nations-in-minnesota/>

⁴ See *The Four Sacred Medicines*, <https://ojibwejournal.wordpress.com/2020/01/11/the-four-sacred-medicines/>

⁵ Id.

The Significance of Tobacco in Ojibwe Rituals and Offerings.

Tobacco is the most significant medicine and gift for and amongst the Ojibwe and as a result

[t]he Ojibwe people, rich in cultural heritage and spiritual practices, have long regarded tobacco as a sacred plant, integral to their rituals and offerings. This ancient tradition is not merely about the act of smoking or using tobacco; it encompasses a profound relationship with nature and a deep understanding of life's interconnectedness. For the Ojibwe, tobacco serves as a bridge between the physical and spiritual realms, facilitating communication with the Creator and the spirit world.

Throughout history, tobacco has played a pivotal role in Ojibwe ceremonies, symbolizing respect, gratitude, and the importance of offering prayers. Its significance extends beyond mere ritualistic use, deeply intertwined with Ojibwe creation stories and cultural identity.⁶

Similarly the American Indian Health Service of Chicago, Inc. explains how the Four Sacred Medicines are part of

The origins of Native American healing practice and ceremony are as diverse and rich as each of the hundreds of American tribes themselves. Nature has provided gifts that have been an important thread between native people and their spirituality. The Four Sacred Medicines (Tobacco, Cedar, Sage & Sweetgrass) have a historical and continuing cultural value to the spirit, physical & emotional well-being of native peoples.⁷

⁶ See *The Significance of Tobacco in Ojibwe Rituals and Offerings*, <https://www.mexicohistorico.com/paginas/The-Significance-of-Tobacco-in-Ojibwe-Rituals-and-Offerings.html>

⁷ See *Four Sacred Medicines: The natural gifts, ceremonies and healing powers of traditional Native American medicines*, American Indian Health Service of Chicago.

Like tobacco, cannabis also had historical use and

[d]espite its presence, cannabis was like that one guest at a potluck—known by some, unknown by others. It didn't reach the legendary status of peyote or tobacco, which were like the soda and chips at every tribal gathering. But where it did make an appearance, cannabis was treated with a mix of respect and practicality, woven into the fabric of daily life and spiritual practice. It wasn't just a plant; it was a piece of cultural heritage, carrying with it a whiff of the sacred, the medicinal, and the profoundly earthly.⁸

Cannabis.

Cannabis, Hemp and Marijuana have a long usage history all over the world and

[t]he use of cannabis by indigenous peoples dates back thousands of years. Many indigenous cultures have incorporated cannabis into their traditional practices, including medicinal, spiritual, and recreational uses. In North America, indigenous peoples have a long history of using cannabis for both medicinal and ceremonial purposes.

For example, in Canada, several indigenous tribes have used cannabis in their traditional practices. The Cree, a First Nations people in northern Quebec and Labrador, historically used cannabis for

<https://aihschgo.org/four-sacred-medicines/> See also *Sacred Tobacco Use in Ojibwe Communities*, by Roxanne Struthers, Ph.D., R.N. and Felicia S. Hodge, Dr. Ph., University of Minnesota School of Nursing, Article in Journal of Holistic Nursing · October 2004. See discussions, stats, and author profiles for this publication at:

<https://www.researchgate.net/publication/8413713>

⁸ See *Ancient Aromas: Cannabis and Its Sacred Role in Native American Traditions*, by Hemp Heals Foundation, June 24, 2024. <https://hemphealsfoundation.com/blog/native-american-cannabis-traditions#roots-in-smoke-tracing-the-history-of-cannabis-among-native-tribes>

medicinal purposes. They would make teas from the leaves and flowers of the cannabis plant to treat various ailments, including pain, inflammation, and respiratory conditions.

Similarly, the Ojibwa people, also known as the Anishinaabe, who inhabit the Great Lakes region in Canada and the United States, have a long history of using cannabis for medicinal purposes. They would use cannabis leaves and flowers to make teas or poultices to treat conditions such as coughs, colds, and arthritis.

In addition to medicinal use, cannabis has also been used by indigenous peoples in Canada and other countries for spiritual and ceremonial purposes. For example, the Haudenosaunee, also known as the Iroquois, used cannabis in their ceremonies to communicate with the spirit world and gain insights from the divine. Similarly, the Cree people used cannabis in their ceremonial practices, believing it had the power to protect against evil spirits and bring good fortune.⁹

Presently, like here in Minnesota

Indigenous communities are seizing the opportunity presented by cannabis legalization to not only participate in the industry but also safeguard their cultural heritage and promote economic self-sufficiency. They are leading the way in creating a more inclusive and sustainable cannabis industry.¹⁰

Native Americans used cannabis in a variety of ways and

Early Native Americans recognized the medicinal potential of marijuana, just like more and more people are today. Everything from headaches to eye irritation and even syphilis was treated with cannabis in various Native American tribes, and a liquid made by crushing its

⁹ See *Indigenous Cannabis Uses A Historical and Modern Perspective, Roots in Smoke: Tracing the History of Cannabis Among Native Tribes*, April 10, 2023, <https://nativeflower.ca/indigenous-cannabis-uses-a-historical-and-modern-perspective/>

¹⁰ See *Indigenous People's History of Cannabis*, Last Updated: November 7, 2023, <https://prestodoctor.com/content/general/indigenous-peoples-history-of-cannabis>

leaves was sometimes used as a topical ointment to help with skin issues.

Interestingly, Native Americans were ahead of the curve on the psychological benefits of cannabis, as well. While our culture stigmatized the effects of marijuana to a degree where it's been difficult to shed that stigma in many places, Native Americans saw marijuana as a helpful tool for maintaining one's psychological health. It could be used on its own in daily meditation practices, or as part of a more intricate ritual. And, while the term "peace pipe" is a European invention, cannabis was often an ingredient in the mix when such sacred pipes were smoked socially.¹¹

The United States has a government patent for cannabinoids as antioxidants and neuroprotectants for various medical benefits as

[c]annabinoids have been found to have antioxidant properties, unrelated to NMDA receptor antagonism. This new found property makes cannabinoids useful in the treatment and prophylaxis of wide variety of oxidation associated diseases, Such as ischemic, age-related, inflammatory and autoimmune diseases. The cannabinoids are found to have particular application as neuroprotectants, for example in limiting neurological damage following ischemic insults, Such as Stroke and trauma, or in the treatment of neurode generative diseases, Such as Alzheimer's disease, Parkinsons disease and HIV dementia. Nonpsychoactive cannabinoids, Such as cannabidoil, are particularly advantageous to use because they avoid toxicity that is encountered with psychoactive cannabinoids at high doses useful in the method of the present invention. A particular disclosed class of cannabinoids useful as neuroprotective antioxidants is formula (I) wherein the R

¹¹ See *How Was Cannabis Used in Native American Culture?* The Vault, Nov. 3, 2021. <https://www.thevaultma.com/education/how-was-cannabis-used-in-native-american-culture>

group is independently from the group consisting of H, CH, and COCH.¹²

At *Waabigwan Mashkiki*, the White Earth Band dispensaries, they explain the how the community would consider and incorporate the tradition of smoking cannabis as another sacred the sacredness of the plant and its ability to facilitate healing, connection, and spiritual growth explaining

In Anishnaabe culture, smoking tobacco is often accompanied by ceremonial rituals and prayers, symbolizing a connection to the natural world and the spirit realm. The smoke from burning tobacco is believed to carry prayers and intentions to the heavens, fostering a sense of community and collective healing.

At Waabigwan Mashkiki, we honor the traditional act of smoking as a sacred ritual that brings people together in harmony with nature and the universe. Whether shared among friends or enjoyed in solitude, the act of smoking cannabis is a celebration of community, connection, and the timeless wisdom of indigenous cultures.

As you partake in the ritual of smoking, take a moment to reflect on its deeper meaning and significance. Embrace the sacredness of the plant and its ability to facilitate healing, connection, and spiritual growth. With each inhale, let the smoke carry your intentions and prayers, uniting you with the collective energy of all who have come before you.¹³

¹² See United States Patent No.: US 6,630,507 B1 Date of Patent: Oct. 7, 2003, Abstract, <https://patentimages.storage.googleapis.com/47/32/b4/3cd27274085e6c/US6630507.pdf>

¹³ See *Medicine Flower*, by Waabigwan Mashkiki. <https://waabigwan.com/our-story/>

Minnesota now has a Cannabis Research Center at the University of Minnesota which recognizes that Minnesota is the 23rd state in the United States to legalize non-medical cannabis use for individuals age 21 and older. [Moreover] Policies related to cannabis are changing rapidly across the United States and new cannabis products are continually being added to the market.¹⁴ Similarly, the State of Minnesota has opened the Office of Cannabis Management.¹⁵

Reserved Rights Doctrine.

Native Americans have a long history of using tobacco and cannabis for medicine, trade, gifts, ceremonies and rituals. Native Americans would consider tobacco and cannabis part of the *reserved rights* to gather and use since before the colonization of North America. The Reserved Rights Doctrine

is a legal principle that asserts that any rights not explicitly granted to the federal government in treaties or statutes with Native American tribes remain with those tribes. This doctrine underscores the idea that Native American tribes retain rights over lands, resources, and governance unless those rights have been clearly relinquished through agreements. This principle has significant implications in understanding the legal and political relationships between tribes and the U.S. government, particularly regarding treaty rights and sovereignty.¹⁶

¹⁴ See *University of Minnesota, Cannabis Research Center*, <https://www.sph.umn.edu/research/centers/cannabis/public-health-faqs/>

¹⁵ See State of Minnesota, Office of Cannabis Mgmt., <https://mn.gov/ocm/laws/cannabis-law.jsp>

¹⁶ See <https://library.fiveable.me/key-terms/hs-native-american-studies/reserved-rights-doctrine>

The Reserved Rights Doctrine was announced by the United States Supreme Court in *United States v. Winans*, 198 U.S. 371 (1905), was a U.S. Supreme Court case that held that the Treaty with the Yakima of 1855, as well as treaties similar to it, protected the Indians' rights to fishing, hunting and other privileges.

The State of Minnesota Lacks Jurisdiction to Enforce Its Adult-Use Cannabis Law Against a Tribal Member on an Indian Reservation.

Mr. Thompson ably explains the U.S. Supreme Court's decision *California v. Cabazon Band of Indians*, 480 U.S. 202 (1987), and the Minnesota Supreme Court's decision in *State v. Stone*, 572 N.W.2d 725 (Minn. 1997), App. Br. 10-25, which *amicus* need not repeat here. Suffice to say that this case is easier and more straightforward than prior cases addressing whether a state law is civil/regulatory or criminal/prohibitory in nature, and may be enforced within a reservation under Public Law 280.

In 2023, the Minnesota Legislature enacted a comprehensive framework to reform and decriminalize adult-use cannabis and allow the possession, use, and home growth of cannabis in Minnesota for persons 21 and older. As part of its enactment, the Minnesota Legislature created the Office of Cannabis Management to make rules, establish policy, and establish "its regulatory authority over the cannabis industry." Minn. Stat. § 342.02. Particularly relevant to this case, the

Minnesota Legislature also explicitly recognized that “[t]he state of Minnesota acknowledges the sovereign right of Minnesota Tribal governments to regulate the cannabis industry and address other matters of cannabis regulation related to the internal affairs of Minnesota Tribal governments or otherwise within their jurisdiction, without regard to whether such Tribal government has entered a compact authorized by this section.” Minn. Stat. § 3.9228, Subd. 2(a). Minnesota law thus recognizes the White Earth Band’s regulatory authority over cannabis matters on the White Earth Reservation.

Notably, none of the cases cited by the district court involve statutory schemes recognizing tribes’ regulatory authority over the specific activity at issue. *See, e.g.*, *State v. Robinson*, 572 N.W.2d 720 (Minn. 1997); *State v. St. Clair*, 560 N.W.2d 732 (Minn. Ct. App. 1997); *State v. Larose*, 673 N.W.2d 157 (Minn. Ct. App. 2002) (Minnesota has jurisdiction to prosecute tribal member for possession of marijuana on Leech Lake Reservation where “[m]arijuana possession [was] not permitted any place in Minnesota”); *State v. Folstrom*, 331 N.W.2d 231 (Minn. 1983) (Minnesota has jurisdiction to enforce statute prohibiting carrying handgun without a permit against a tribal member on a reservation); *State v. Losh*, 755 N.W.2d 736 (Minn. 2008) (Minnesota has jurisdiction to enforce driving after revocation offense against tribal members on reservation where underlying basis for revocation was driving while impaired). Unlike this case, the cases cited by the district court involve

conduct categorically prohibited by the State of Minnesota due to certain public safety threats.

When the conduct at issue is generally permitted and subject to regulation, the State of Minnesota lacks jurisdiction to enforce state law against the conduct of tribal members on the reservation. *See Morgan v. 200 Volkswagen*, 754 N.W.2d 587, 593 (Minn. Ct. App. 2008) (“Plainly, the ownership of vehicles is generally permitted conduct, subject to regulation, leading us to conclude that the vehicle-forfeiture statute is civil/regulatory statute, and the state does not have authority under Public Law 280 to enforce it against Indian-owned vehicles for conduct occurring on the owner’s reservation.”); *State v. Johnson*, 598 N.W.2d 680 (Minn. 1999) (holding that Minnesota lacks jurisdiction to enforce state laws requiring proof of insurance and prohibiting driving after revocation); *Stone*, 572 N.W.2d (applying *Cabazon* to hold that Minnesota lacks jurisdiction to enforce driving laws against tribal members on the reservation, including the failure to provide motor vehicle insurance, proof of insurance, driving with an expired registration, driving without a license, driving with an expired driver’s license, speeding, driving without a seat belt, and failure to have child in a child restraint seat, and noting that “driving is generally permitted, subject to regulation”).

CONCLUSION

Based on the foregoing, the State of Minnesota Lacks Jurisdiction to Enforce Its Adult-Use Cannabis Law Against a Tribal Member on an Indian Reservation.

Respectfully submitted,

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