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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

WALTER JOSEPH CASWELL,

Defendant-Appellee.

Supreme Court No.169563

Court of Appeals No. 368232

Mackinac Circuit Court No. 23-4360-AR

92nd District Court No. 18D657689A/B-SM

BRIEF OF AMICI CURIAE
BAY MILLS INDIAN COMMUNITY, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, LITTLE RIVER BAND OF OTTAWA INDIANS, LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS, AND THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

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STATEMENT OF JURISDICTION

1. MCR 7.303(B)(1) provides this Court with discretion to review the November 24, 2025 opinion of the Court of Appeals affirming the Mackinac Circuit Court's September 27, 2023 opinion and order on appeal, which itself affirmed the 92nd District Court's April 18, 2023 opinion and order that concluded that Defendant-Appellee had demonstrated that his tribe was a political successor in interest to a signatory to the 1836 Treaty of Washington, entitling him to an affirmative defense to the citations issued to him for spear fishing in a closed stream. This Court also has jurisdiction pursuant to MCL 600.215(3). Plaintiff-Appellant the People of the State of Michigan timely filed an application for leave to appeal on January 20, 2026.

2. Amici Curiae Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, Little Traverse Bay Bands of Odawa Indians, and the Sault Ste. Marie Tribe of Chippewa Indians file this brief on behalf of their respective Tribal governments, pursuant to MCR 7.312(H)(2)(b). This brief is timely filed 21 days after the time for Defendant-Appellee's answer to the application for leave has expired. MCR 7.312(H)(4)(a).

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STATEMENT OF QUESTION PRESENTED

The Amici Tribes concur with the statement of question presented in the People's application for leave to appeal:

1. Did the district court abuse its discretion in dismissing the charges against Caswell on the basis that he was exercising treaty rights where the district court altered and misapplied the federal test for determining whether the Mackinac Tribe group has treaty-tribe status?

Appellant's answer:	Yes.
Appellee's answer:	No.
District court's answer:	No.
Circuit court's answer:	No.
Court of Appeals answer:	No.
Amici's answer:	Yes.

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INTRODUCTION

The Amici Tribes, Bay Mills Indian Community ("Bay Mills"), Grand Traverse Band of Ottawa and Chippewa Indians ("Grand Traverse"), Little River Band of Ottawa Indians ("Little River"), Little Traverse Bay Bands of Odawa Indians ("Little Traverse") and the Sault Ste. Marie Tribe of Chippewa Indians ("Sault Tribe") (hereafter "Tribes") by and through their attorneys, pursuant to Michigan Court Rule 7.312(H)(2)(b) respectfully file this amicus brief to guide the Supreme Court's review of the above-referenced application for leave to appeal.

The Tribes have a direct interest in litigation addressing claims to treaty-reserved usufructuary rights under the Treaty of Washington, 7 Stat 491 (March 28, 1836) ("1836 Treaty" or "Treaty"). The Tribes fought for their rights guaranteed to them by the 1836 Treaty, not only in the Michigan courts in *People v LeBlanc*, 399 Mich 31 (1976), but also later in the federal courts in *United States v Michigan*, 2:73-cv-26 (WD Mich). Since the 1979 decision issued by the U.S. District Court for the Western District of Michigan, reported at 471 F Supp 192, and as affirmed and expanded by trial and appellate decisions and judicial and consent decrees thereafter, the federal courts have shaped the exercise and regulation of these federally-reserved treaty rights for nearly 50 years.[1] The federal courts are the appropriate forum to interpret and enforce those rights because treaty-tribe status and treaty rights are federal in nature. It should be noted that the issuance by this Court of a decision in 1976 acknowledging the continued existence of usufructuary rights reserved by the 1836 Treaty in *People v LeBlanc* did not preclude the adjudication of those same rights in the federal court proceedings in *United States v Michigan*. Federal courts are not bound by a state court pronouncement regarding the existence, nature, and

[1] *See* 623 F2d 448 (CA6, 1980); 89 FRD 307 (WD Mich, 1980); 653 F2d 277 (CA6, 1981); 520 F Supp 207 (WD Mich, 1981); 454 US 1124 (1981); 12 ILR 3079 (WD Mich, 1985); 424 F3d 438 (CA6, 2005); 68 F4th 1021 (CA6, 2023); 131 F4th 409 (CA6, 2025); 223 L Ed 2d 505 (2026).

duration of rights created by treaty and federal law; that is the essence of the Supremacy Clause of the United States Constitution. US Const, art VI, cl 2. See also *United States v Michigan*, 653 F2d 277, 279 ("The protection of those rights is the solemn obligation of the federal government, and no principle of federalism requires the federal government to defer to the states in connection with the protection of those rights.").

Federal standards control whether a modern-day tribe is a treaty-tribe, *i.e.*, whether there is adequate evidence to show that "a group of citizens of Indian ancestry is descended from a treaty signatory and has maintained an organized tribal structure." *United States v Washington*, 520 F2d 676, 693 (1975). In an earlier appeal in this case, the Court of Appeals adopted that federal test, requiring Caswell to prove that: (1) he is a member of a group of citizens with Indian ancestry; (2) the group descends from a treaty signatory; and (3) the group has maintained an organized tribal structure. *People v Caswell*, 336 Mich App 59, 75 (2021).

On remand, the district court did not apply the correct test to determine whether the modern-day organization known as the "Mackinac Tribe of Odawa and Ojibwa Indians" (hereafter "Mackinac Tribe") is a political successor-in-interest to any treaty signatory. Instead, it improperly conferred treaty rights to an individual, effectively jeopardizing the legal and regulatory scheme that governs the exercise of such rights, which are detailed in lengthy federal court-approved management and regulatory frameworks. The circuit court and the Court of Appeals perpetuated this error.

Mr. Caswell claims membership in the "Mackinac Tribe of Odawa and Ojibwa Indians," a non-profit charitable organization formed under the Internal Revenue Code, 26 USC 501(c)(3).[2]

[2] This group is organized as a 501(c)(3) tax exempt corporation under the name of the "Mackinac Genealogy Native and Ethno History Association," an organization with no governmental

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This fact alone is not dispositive of whether this group is a tribe, much less one with treaty rights. Further, the district court record is insufficient to make any determination on whether that non-profit organization could be shown to be a tribal government which has continuously existed since treaty times and which has the authority and capacity to issue and enforce regulations governing the exercise of usufructuary rights. Allowing the Court of Appeals' ruling to stand will create an obvious exception for this so-called tribe to upend the legal and regulatory structure that has been in place for the five Amici Tribes that have federally-reserved and recognized rights in the ceded territory encompassing 14 million acres of the eastern Upper Peninsula and northern Lower Peninsula of Michigan as guaranteed under the 1836 Treaty. That exception will cause risk of overharvest of certain species at specific locations and will jeopardize the ability of the Amici Tribes to effectively protect the fish, wildlife, and plants within the 1836 Treaty cession for current and future generations.

STATEMENT OF INTEREST OF THE AMICI

The Amici Tribes are tribal governments and may file this amicus brief by right, in accordance with MCR 7.312(H)(2)(b). The Tribes submit this brief to support the application for leave to appeal filed by the People of the State of Michigan. The Tribes concur with the People's assertion that this case involves significant public interest regarding which groups are entitled to exercise treaty rights in Michigan, legal principles affecting the legal and regulatory framework of the State and the Tribes in co-managing natural resources, and that the Court of

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authority. Adams Testimony, February 12, 2019 Transcript, pp. 6-7. Underscoring that there are multiple entities purporting to represent the Mackinac bands, a search of the IRS Exempt Organizations database (https://apps.irs.gov/app/eos/ (accessed March 9, 2026)) reveals at least three Mackinac "tribal" 501(c)(3) organizations: the Mackinac Band of Chippewa & Ottawa Indians, Mackinac Bands of Chippewa and Ottawa Indians Inc., and Mackinac Genealogy Native and Ethno History Association. Each entity has its own EIN, suggesting they are distinct from one another.

Appeal's decision was clearly erroneous. See Application for Leave to Appeal 3. Particularly, the Tribes file this brief to provide the Michigan Supreme Court with additional information germane to the second and third prongs of the federal test: whether Caswell belonged to a group that descends from a treaty signatory, and whether that group has maintained an organized tribal structure. *People v. Caswell*, 336 Mich App 59, 75 (2021).

Under the district court's erroneous analysis (subsequently adopted by the circuit court and Court of Appeals), any *individual* may assert a treaty right by proving that they descend from someone who signed one of the treaties with the United States. This analysis employed by the lower courts is wholly at odds with the reservation of treaty rights to *tribes* as political successors in interests to treaty signatories. "The fishing right reserved by the Indians in 1836 and at issue in this case is the communal property of the tribes which signed the treaty and their modern political successors; **it does not belong to individual tribal members**." *United States v Michigan*, 471 F Supp 192, 271 (WD Mich, 1979), citing *United States v Washington*, 520 F2d 676 (CA9, 1975) (emphasis added).

The Amici Tribes are the modern-day political successors of the Ottawa and Chippewa bands which inhabited Michigan's northern Lower Peninsula and eastern Upper Peninsula at and before contact with Europeans. The Tribes have been hunting and fishing on their ancestral lands since time immemorial. They are recognized as political successors-in-interest to the Ottawa and Chippewa bands that entered into treaties with the United States between 1785 and 1855. *See* Treaty with the Chippewa, June 16, 1820 (7 Stat 206); Treaty with the Ottawa and Chippewa Nations of Indians, March 28, 1836 (7 Stat 491); Treaty with the Ottawa and Chippewa, July 31, 1855 (11 Stat 621); Treaty with the Chippewa of Sault Ste. Marie, Aug. 2, 1855 (11 Stat 631).

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In the 1836 Treaty the Tribes ceded a large area of land to the United States, subject to a reservation of the right to hunt, fish, and gather, using all land and water resources, "… until the land is required for settlement." *United States v Michigan*, 471 F Supp 192, 235-236 citing Article Thirteenth. Likewise, Articles Second and Third of the Treaty reserved to the signatory bands reservations proximate to significant traditional fishing grounds. *Id.* at 231-32. *United States v Michigan* confirmed the Tribes' reservation of usufructuary rights included the right to fish for commercial and subsistence purposes in the Great Lakes, and to regulate that fishing. 653 F2d 277, 278 (CA6, 1981). Decrees entered in that case in 1985, 2000, and 2023 detail how fishing in 1836 Treaty waters is allocated, managed, and regulated by the Amici Tribes, the State of Michigan, and the United States. Those seven sovereigns likewise entered into a permanent consent decree in 2007 governing the inland exercise of usufructuary rights (hunting, fishing, and gathering) under Article Thirteenth and allocation of inland resources between the Tribes and the State. *United States v Michigan* (WD Mich Case No. 2:73-cv-26, ECF No. 1799).

Historically, the Tribes comprehensively regulated their Treaty fishing activities (*United States v Michigan*, 471 F Supp 248, 272 ("Pursuant to [the tribes'] constitutional and ordinance authority, the treaty fishing activities of the Indians in the area ceded by the Treaty of 1836 are comprehensively regulated and enforced.")) and their ongoing political will to regulate their citizens' exercise of usufructuary rights has been crucial to the conservation of Michigan's natural resources and the continued availability of those resources for harvest. Regulation has been carried out through codes adopted by individual Tribes, inter-tribal regulation through various bodies established for that purpose, and in close coordination with the Michigan Department of Natural Resources. Allowing individuals who are not members of a treaty tribe to hunt and fish outside of State and Tribal regulation and law, with the potential for unknown and unauthorized exercise of

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treaty rights and with no reporting requirement, will upend the legal and regulatory schemes that have been in place for decades, and threaten the very resources themselves. This case involves spearing on an inland stream, but as discussed above the 1836 Treaty right is far more expansive, raising the potential for cascading effects throughout the Treaty cession.

To be clear, the Amici Tribes do not sound this alarm out of exclusionary motives. (In fact, other Amici Tribes supported the efforts of Little River and Little Traverse to gain federal recognition in the early 1990s.) Rather, they must demand adherence to the same processes they followed and standards they attained in order to protect the integrity of that process and the very treaty right itself. Over the years, there has been an array of mechanisms by which "recognition" or other forms of affirming a government-to-government relationship between the United States and an Indian Tribe may be determined.[3] Through these mechanisms, each of the Amici Tribes has fought for and proven both federal recognition and entitlement to treaty rights. The Mackinac Band should be no different.

Bay Mills

The Bay Mills Indian Community is one of the oldest continuously-recognized tribal governments in Michigan. It is a successor in interest to the six bands of Ojibwe "residing at or near Sault Ste. Marie," Art.1, Clause First, Treaty of July 31, 1855 (11 Stat. 621). The bands' first formal negotiation with the United States occurred in 1820, after the area became part of the United States as a result of the Jay Treaty's[4] clarification of the border between the United States and Canada. The United States wanted a military presence at that location and negotiated for land on

[3] Note that the inquiry is not "establishing" a government-to-government relationship but rather evidence of a continuing one – a key fact missing from the evidence presented by Caswell. See Application at 22-24, 36-37.

[4] Formally known as Treaty of Amity, Commerce and Navigation with Great Britian, Nov. 19, 1794 (8 Stat. 116).

which a fort could be built in the Treaty of June 16, 1820 (7 Stat 206; the bands reserved in Article 3 a "perpetual right of fishing at the falls of St. Mary's, and also a place of encampment … convenient to the fishing ground"). In the 1836 Treaty, Bay Mills secured the important reservation of land and water of Lake Superior's Whitefish Bay. The continued existence of this reservation is the only issue asserted in the 1973 complaint filed by the United States in *United States v Michigan,* Case No. 2:73-CV-26 (WD Mich), which was not resolved in the lengthy and detailed proceedings to date.

The importance of Whitefish Bay was confirmed yet again by the United States' agreement to ensure permanent occupation there for the six bands in the Treaty of July 31, 1855 (11 Stat. 621). In Article First, Section Eighth, the following obligation is made:

> Should either of the bands residing near Sault Ste Marie determine to locate near the lands owned by the missionary society of the Methodist Episcopal Church at Iroquois Point, in addition to those who now reside there, it is agreed that the United States will purchase as much of said lands for the use of the Indians as the society may be willing to sell at the usual Government price.

Congress appropriated funding for the purchase in the Act of June 19, 1860 (12 Stat 58) and the United States acquired approximately 900 acres from the Methodists later that year. Some acreage was allotted to individual Tribal citizens pursuant to the 1855 Treaty, but most remained held by the United States for the communal benefit of all members, and continues to be so held today under the Constitution of the Bay Mills Indian Community. The federal obligation of trust and responsibility caused the Bureau of Indian Affairs in 1936 to supervise the establishment of a written Constitution for the Bay Mills Indian Community and conduct the requisite election to adopt it under the provisions of the Indian Reorganization Act of 1934, now codified at 25 USC 5101, *et seq.*

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In 1974 Bay Mills intervened in *United States v. Michigan* to protect its treaty rights. This intervention was the catalyst for the 1985 decree (and the subsequent Great Lakes fishing decrees in 2000 and 2023) regarding treaty-reserved fishing rights. Bay Mills is also party to a 2007 consent decree regarding exercise of inland treaty hunting and fishing rights.

Grand Traverse

The Grand Traverse Band of Ottawa and Chippewa Indians "became the first tribe 'acknowledged' by the Secretary of the Interior pursuant to the federal acknowledgement process, 25 CFR Part 54 (now 25 CFR Part 83)." *Grand Traverse Band of Ottawa and Chippewa Indians v United States Attorney for the Western District of Michigan*, 369 F3d 960, 962 (CA6, 2004). This administrative acknowledgement was based on a voluminous documentary record, see Exhibit 1 filed with GTB's complaint as intervenor-plaintiff in the *United States v Michigan* litigation (WD Mich Case No. 2:73-cv-26), ECF No. 395 filed October 26, 1979. Specifically, Exhibit 1 (ECF No. 395, PageID.35747-35761) is the "Recommendation and summary of evidence for proposed finding for federal acknowledgment of the Grand Traverse band of Ottawa and Chippewa Indians, Peshawbestown, Michigan pursuant to 25 CFR 54." The entire documentary record justifying federal acknowledgment also contains comprehensive separate anthropological, history, genealogy, and demographic reports.

This federal acknowledgement allowed Grand Traverse to intervene in *United States v Michigan* in 1979 just as Bay Mills did in 1974 and the Sault Tribe did in 1976. This intervention by Grand Traverse ultimately led to that tribe's inclusion in the Great Lakes and inland hunting and fishing decrees that govern treaty hunting and fishing for the five Amici Tribes.

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Little River

The Little River Band of Ottawa Indians has asserted their sovereignty throughout their history including in the signing of the Treaty of Chicago (August 29, 1821; 7 Stat 218), the Treaty of Washington (March 28, 1836; 7 Stat 491) and the Treaty of Detroit (July 31, 1855; 11 Stat 621). They have been known as the Grand River Ottawa people and have been organized under several names, including members of "Indian Village" on the Manistee River, residents of the Pere Marquette Village or "Indian Town", Unit No. 7 of the Northern Michigan Ottawa Association, the Thornapple River Band, and finally the Little River Band of Ottawa Indians. Little River obtained federal recognition through an act of Congress in 1994, after more than a century during which the tribe maintained community identity but lacked formal federal acknowledgment. Public Law 103-324 (108 Stat 2156).

As an exercise of their sovereign powers, and pursuant to their federal recognition, Little River adopted their first constitution, in accordance with the Indian Reorganization Act of June 18, 1934, as amended, on May 27, 1998. This federal recognition through congressional act allowed Little River to intervene in the *United States v Michigan* litigation to protect their treaty rights to hunting and fishing in the 1836 ceded territory.

Little Traverse

Starting in the late 1980s the Little Traverse Bay Bands of Odawa Indians presented extensive evidence to the United States Congress of its status as a signatory to the 1836 Treaty and its continuous political and social existence from Treaty times to the present. Tribal citizens and historians, including Vine Deloria, testified before the Senate Select Committee on Indian Affairs and the House Subcommittee on Indian and Insular Affairs, supported by vast written documentation, including a published book, Gah-Baeh-Jhagwah-Buk: The Way It Happened- A

Visual culture history of the Little Traverse Bay Bands of Odawa by Dr. James M. McClurken. This effort culminated with the enactment of Public Law 103-324 on September 21, 1994, the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act which reaffirmed the federally recognized status of the two Tribes. The accompanying Senate Report 103-260, and House Report 103-621, laid out the Congressional findings regarding the Tribes' Treaty status and continuous political and social existence.

Soon after passage of Public Law 103-324 Little Traverse appointed a Natural Resources Commission and formed its Natural Resources Department to develop extensive Great Lakes and Inland hunting, fishing and gathering regulations, and implement licensing, oversight and enforcement of its citizens' Treaty commercial and subsistence harvesting activities. LTBB intervened as a party in *United States v. Michigan* in 1998, and subsequently participated in the negotiations leading to the 2000 Great Lakes Consent Decree, the 2007 Inland Consent Decree, and the 2023 Great Lakes Decree. LTBB's Natural Resources Department is presently made up of 29 staff including certified conservation enforcement officers, Great Lakes and Inland fisheries and wildlife biologists, environment scientists and policy experts, and administrative staff.

Sault Tribe

Sault Tribe's struggle for federal recognition took more than 20 years to complete. The Sault Tribe understood that though they had signed treaties that had granted large amounts of land to the federal government, those treaties did not end their sovereignty or terminate their ancestral right to hunt and fish on the lands and waters ceded by those treaties. They sought federal recognition to assert those rights and that sovereignty and organized as the "Original Bands of Chippewa Indians and Their Heirs" in 1953, beginning the long process of building their case for

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federal recognition. Sault Tribe built its case by combing through archives, gathering historical documents, culling census records, church records, and military records.

The United States acknowledged, through a memorandum of the Commission of Indian Affairs, the Sault Tribe as a federally recognized Tribal Government in 1972.[5] The Sault Tribe organized its tribal government under a constitution adopted pursuant to Section 16 of the Indian Reorganization Act, 25 USC 5123, and in 1976 the Sault Tribe intervened in the *United States v Michigan* litigation to protect the Sault Tribe's aboriginal and treaty right to fish in certain waters of the Great Lakes free from State interference. The Sault Tribe is a party to the 1985, 2000 and 2023 decrees governing fishing in the Great Lakes, as well as the 2007 consent decree regarding exercise of inland treaty hunting and fishing rights.

There is considerable overlap in membership between the Sault Tribe and the "Mackinac Tribe" organization in which Mr. Caswell claims membership. Since its federal recognition in 1975, the Sault Tribe's membership rolls have consisted of many descendants of the Mackinac bands. The organization calling itself the "Mackinac Tribe" consists of individuals who either desired to leave the Sault Tribe's membership or who had previously been denied membership in the Sault Tribe. In fact, Mr. Adams, the self-described former "chairman" of the alleged "Mackinac Tribe" that testified in support of Mr. Caswell in the district court has apparently claimed membership in the Sault Tribe in prior federal proceedings. *Adams v Bureau of Indian Affairs*, 50 IBIA 354 (2009).

[5] *See* Sault Tribe Constitution November 13, 1975, https://www.saulttribe.com/images/downloads/history%20and%20culture/story%20of%20our%20people/CONST%202010%20Amendment%20II.pdf (accessed March 10, 2026).

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Collective Interest

These five Amici Tribes have a direct interest in litigation addressing claims to treaty-reserved usufructuary rights under the 1836 Treaty. The Tribes are concerned that none of the lower courts correctly or adequately addressed the legal principles that govern the outcome of this matter. Further, the district court did not properly apply the necessary federal standards and essentially held that an individual may hold a treaty right, contrary to federal caselaw.

Subsequent to enactment of federal regulations in 1978[6], two processes exist by which an Indian group can attain federal acknowledgement: either by the administrative federal acknowledgment process (Grand Traverse), or by federal legislation (Little River and Little Traverse). Both processes require "voluminous documentary evidence" exceeding the record in this case by orders of magnitude. *See* Application 19-20. In *United States v Michigan*, to achieve status as an 1836 Treaty Tribe possessing treaty-reserved rights declared in and governed by subsequent court orders in that case, the law of the case requires federal recognition and intervention as a party-plaintiff. As an individual, Defendant Caswell does not individually possess "treaty rights"; only as a duly-authorized member of a treaty tribe may he exercise treaty rights. And then, State regulations do not apply to that activity if and only if the treaty tribe demonstrates effective tribal regulations. *United States v Michigan,* 623 F2d 448 (CA 6 1980). But first the "Mackinac Tribe" must properly attain treaty-tribe status and then be granted permission by the *federal* court to intervene in *United States v Michigan*. And only after those actions occur is the existence of pre-emptive tribal self-regulations adjudicated. None of these prerequisites may be simply ordained by order of a state court.

[6] 25 CFR Part 83; see 59 Fed Reg 9280 (Feb 25, 1994).

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STATEMENT OF FACTS AND PROCEEDINGS

The Tribes hereby adopt the statement of facts and proceedings as provided by the State of Michigan in its Application for Leave to Appeal filed January 20, 2026. The Tribes further urge this Court to take notice of the substantial process and voluminous records that were needed for the five Amici Tribes to establish federal recognition as well as the considerable amount of evidence that has been needed to establish the Great Lakes Fishing Decrees and the 2007 Inland Consent Decree in the *United States v Michigan* litigation.

The treaty rights reserved in the Treaty of Washington of March 28, 1836 belong to tribal political communities rather than to individuals acting independently of those communities. From the earliest treaty jurisprudence, the United States Supreme Court has recognized that Indian treaties are agreements between sovereign governments. The rights reserved in those agreements therefore belong to the tribes that negotiated them and to their political successors. See *United States v Michigan*, 471 F Supp 192, 218 (1979).

The treaty tribe test adopted in the first appeal in this case reflects this foundational principle. Under that test, a group must demonstrate that it is: a group of citizens of Indian ancestry; descended from a treaty signatory; and maintaining an organized tribal structure. *People v Caswell*, 336 Mich App 59, 75 (2021).

The third element—maintenance of an organized tribal structure—is critical because treaty rights were reserved by tribal communities exercising collective political authority. Without demonstrating continuity of tribal political organization, a group cannot establish that it is the political successor to the communities that reserved those treaty rights and cannot establish that it is a treaty tribe. The evidence presented in this case does not establish such continuity. At most, the record reflects the existence of individuals with Indian ancestry who have organized a modern

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association identifying itself as the Mackinac Tribe. That showing falls far short of demonstrating the existence of a tribal political community descended from the bands that negotiated the 1836 Treaty.

ARGUMENT

I. The Mackinac Band has not demonstrated that it is a Treaty Tribe.

In *United States v. Michigan,* the five tribes whose treaty hunting and fishing rights have been affirmed all established that the federal government recognized them as a tribe prior to the determination of whether they had reserved treaty rights to hunt and fish in the ceded territory. *United States v. Michigan*, 471 F Supp 192, 218 (1979) (holding that Sault Tribe and Bay Mills are political successors in interest to signatories of the Treaty of 1836, were recognized by the federal government, and were organized under the Indian Reorganization Act).[7]

U.S. District Court Judge Noel Fox found in that 1979 opinion that: "Ancestors and members of the plaintiff tribes have continuously exercised Indian fishing rights since the 1836 Treaty without abandonment." *Id.* at 249. Judge Fox's opinion and order states that the "Secretary of the Interior has recognized the plaintiff-intervenor tribes as the modern tribal successors to the Indians who were signatory to the Treaty of 1836." Further, "The fishing right reserved by the Indians in 1836 and at issue in this case is the communal property of the tribes which signed the treaty and their modern political successors; it does not belong to individual tribal members." *Id.* at 271, citing *United States v Washington*, 520 F2d 676 (CA9, 1975).

While individuals may voluntarily form their own group to associate with, they must establish the necessary political continuity to establish treaty-tribe status. For 1836 Treaty tribes

[7] This analysis remained the same in 1979 when GTB intervened in the case and in 1998 when LRB and LTTB intervened.

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that means that they must establish that they are recognized by the federal government, are a current functioning sovereign tribal government, and are the political successors of signatory tribes. It is the Amici Tribes, not the modern-day "Mackinac Tribe," who have been found as political successor-in-interest to the 1836 treaty-time Indians. *Michigan*, 471 F Supp at 249.

In *Adams v. Bureau of Indian Affairs*, 50 IBIA 354 (2009), Mr. Adams and another individual that claimed membership in the "Mackinac Tribe of Odawa and Ojibwa Indians" challenged the Bureau of Indian Affairs' failure to counter-sign treaty fishing identification cards that had been issued by the "Mackinac Tribe." The Interior Board of Indian Appeals (IBIA) explained that the "Appellants apparently are members of the Sault Ste. Marie Tribe, but contend that the rules and regulations of the Sault Ste. Marie Tribe deny them eligibility to exercise treaty fishing rights, notwithstanding their membership." *Id* at n 4. The BIA refused to counter-sign the cards because the "Mackinac Tribe" was not federally recognized and because such entity was not recognized as a successor-in-interest to the tribes that signed the Treaty of 1836. *Id* at n 5 (acknowledging that five federally-recognized tribes [Bay Mills, Grand Traverse, Little River, Little Traverse, and Sault Tribe] are recognized successors in interest to the 1836 treaty signatories).[8] The individuals who make up the so-called "Mackinac Tribe" organization are persons who have become unsatisfied with, or were not entitled to, membership in the Sault Tribe or the other Amici Tribes. The "Mackinac Tribe" organization lacks the continuous political continuity necessary to achieve treaty-tribe status.

Recognition as a modern-day treaty-tribe is a federal issue, defined by Congress, federal regulations, and federal courts. The federal court in *United States v Michigan* made clear that any

[8] While there are twelve federally recognized Indian tribes in Michigan, only the five tribes who are political successors-in-interest to the 1836 Treaty signatories are parties to the decrees that currently address hunting and fishing on ceded lands.

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group claiming rights under Article XIII of the 1836 Treaty must be federally recognized. *United States v. Michigan*, ECF No. 1799, Page ID1699 (WD Mich 2007) (entering the 2007 Inland Consent Decree recognizing and governing the inland hunting and fishing rights of the five Amici Tribes who have treaty-reserved rights to hunt and fish in the 1836 ceded territory).

These principles were front and center in 1988, when Little Traverse and one of its members filed suit against the State of Michigan, asserting that Little Traverse was a political successor to an 1836 Treaty signatory and that the State should therefore be enjoined from enforcing its fishing laws against it and its members. *Little Traverse Bay Bands of Ottawa Indians v Michigan*, opinion of the United States District Court for the Western District of Michigan, issued August 3, 1988 (Case No. G87-118), 1988 US Dist LEXIS 18708 (WD Mich, 1988) (attached Exhibit 1). The State moved to dismiss for failure to exhaust administrative remedies, citing Little Traverse's lack of federal recognition. The court's analysis started from the proposition that "[a]s all parties agree, tribal status is a prerequisite to the enforcement of treaty rights" and then described the Department of the Interior administrative procedure by which Indian tribes may seek federal recognition. Relevant here, the court detailed the comprehensive nature of the acknowledgement process and the many DOI tasked with conducting review, including historians, anthropologists, and genealogical researchers. Recognizing the applicable administrative regulations, Little Traverse nevertheless asked the court to apply them to determine its treaty-tribe status. Judge Enslen declined that invitation, holding instead that the Interior Department's expert staff was better suited to develop the required factual record. Subsequently, in 1994, Little Traverse achieved treaty-tribe status with the enactment of Public Law 103-324 (108 Stat 2156)

Federal courts are to determine federal matters, such as treaty rights, and while Michigan courts can provide an opinion on whether they believe a group deserves federal recognition and

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reserved treaty rights, it is not binding on the United States or federal courts. Further it cannot be dispositive of whether or not that group can exercise the treaty right without following the same federal process the Amici Tribes did.

II. The Exercise of Treaty Rights in Michigan Occurs Within a Federal Regulatory Framework.

The fishing decrees and orders entered in *United States v Michigan* provide the legal and regulatory framework for the shared resource existing between treaty tribes found to be political successors in interest of treaty-time Indians and the State of Michigan. The orders illustrate the federal process that is needed to regulate off-reservation treaty hunting and fishing. In the original 1979 decision in *United States v Michigan* Judge Fox stated:

> The Bay Mills Indian Community regulates the fishing of its members in the waters of the Great Lakes within the treaty area and requires its members who fish commercially to have a tribal fishing license and a treaty fishing identification card issued by the United States Department of the Interior pursuant to 25 C.F.R. part 256. The tribe has a conservation code and a conservation committee which includes ex officio members from the Michigan Department of Natural Resources and the United States Fish and Wildlife Service.

United States v Michigan, 471 F Supp at 248. Judge Fox made a similar finding with regard to the Sault Tribe's regulations. *Id.* Important to note in this statement is the fact that the Tribes have their own fishing regulations, have cooperative management with the State of Michigan, and that there is a federal process necessary to have the Bureau of Indian Affairs (BIA) counter-sign tribal fishing licenses. 25 CFR 249.3. Similarly, the Tribes' continuing commitment to regulate exercise of the treaty right was the critical reason the Sixth Circuit held on appeal that the State had not demonstrated that Indian fishing would cause irreparable harm to the resource such that the imposition of State regulations would be appropriate. *United States v Michigan*, 653 F2d 277, 279 (CA6, 1981). In the early 1980s the tribes fished (in the Great Lakes) under federal regulations, and after those lapsed, under inter-tribal regulations that the District Court concluded were superior

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to the lapsed federal standards. *United States v Michigan*, 534 F Supp 668, 670 (WD Mich, 1982). The 2007 Inland Consent Decree resolved the dispute as to the continued existence of the Amici Tribes' right to hunt, and the other usual privileges of occupancy, secured by Article 13 of the 1836 Treaty of Washington, 7 Stat. 491, on lands and inland waters within the boundaries of the territory ceded in the 1836 Treaty. *United States v. Michigan*, ECF 1799 (W.D. Mich 2007). The order and decree recognize the existence of, and defines the extent of the Tribes' inland Article 13 rights on designated lands and waters within the boundaries of the 1836 ceded territory. It confirms the co-management regime as agreed to by the Tribes, the federal government, and the State of Michigan.

Since the Sixth Circuit's 1981 decision and subsequent to the 2007 Inland Consent Decree, the right and obligation of each Amici Tribe to regulate its members' exercise of Article Thirteenth usufructuary rights has not been questioned. The State is prohibited from regulating or otherwise interfering with the exercise of such rights except as agreed by the parties within the *United States v Michigan* decrees and under the strict conservation standard declared in *People v LeBlanc*, 399 Mich 31 (1976). In practice, this means that each of the Amici Tribes has established tribal courts, adopted regulations and licensing and permitting regimes, hired conservation officers, and participated in inter-Tribal, state, regional and bi-national bodies concerned with the effective and careful use and management of natural resources. These are functions of *governments* who are best suited to carry them out. The Mackinac Tribe has demonstrated none of these capabilities.

In summary, the federal court decrees entered pursuant to *United States v Michigan* are the federal framework in which 1836 Treaty Tribes assert their treaty rights and carry out the necessary co-management and enforcement roles to protect the shared resource and the treaty rights. The "Mackinac Tribe" and Caswell sit outside that framework and until such time as the federal

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government acknowledges the Mackinac Tribe and the federal court allows it to intervene in *United States v Michigan,* Caswell cannot lawfully fish outside of state regulations and law.

CONCLUSION

The "Mackinac Tribe" has not demonstrated that it is a treaty tribe. It is not a federally recognized tribal government (as is necessary to establish treaty rights under *United States v Michigan*) and is not subject to the tribal regulations implemented pursuant to the federal court orders and decrees that govern treaty hunting and fishing in Michigan. The "Mackinac Tribe" and any other similarly situated group must adhere to the same processes and standards to which the Amici Tribes were held in order to establish their federal recognition, confirm their treaty rights, and protect the shared resource for future generations to exercise those same rights.

Respectfully Submitted,

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Dated: March 10, 2026

By: /s/ Karla Gerds
Karla Gerds, Paralegal

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Little Traverse Bay Bands of Ottawa Indians v. Mich.

United States District Court for the Western District of Michigan,

August 3, 1988, Filed

File No. G87-118 CA7

Reporter
1988 U.S. Dist. LEXIS 18078 *

IN RE: LITTLE TRAVERSE BAY BANDS OF OTTAWA INDIANS on its own behalf and on behalf of John Case, Plaintiffs, v. STATE OF MICHIGAN and GORDON GUYER, Director of the Michigan Department of Natural Resources, Defendants.

Core Terms

tribe, treaty, regulations, tribal, exhaustion of administrative remedies, fishing, rights, exhaustion

Judges: ENSLEN

Opinion by: RICHARD A. ENSLEN

Opinion

[*1] *OPINION*

In this action, the Little Traverse Bay Bands of Ottawa Indians ("LTBB") on its own behalf and on behalf of John Case, apparently a member of the LTBB, seek injunctive relief and damages against the State of Michigan. The LTBB alleges in its first amended complaint that it is a political successor to the signatories of the Treaty with the Ottawa and Chippewa Nation of 1836, that it has exercised aboriginal fishing rights in the Great Lakes ceded to it by that treaty and that it has a vested right to fish in certain waters of the Great Lakes by virtue of the 1836 treaty and the Treaty of Ghent of 1814. The LTBB seeks to prevent the State of Michigan from enforcing the State's fishing laws and regulations against it and, specifically, against Mr. Case. The matter is before the Court on the State of Michigan's motion to dismiss the complaint for, among other things, failure to exhaust administrative remedies. The LTBB admit that they have not been recognized as an Indian tribe by the Department of the Interior. The question before the Court is whether it ought to require the LTBB to seek and obtain federal recognition as an Indian tribe **[*2]** prior to determining whether the State of Michigan may enforce its fishing laws and regulations against the LTBB. Because the Court concludes that exhaustion of administrative remedies is appropriate in this case, it will grant the State's motion to dismiss.

Discussion

As all parties agree, tribal status is a prerequisite to the enforcement of treaty rights. *United States v. State of Washington, 520 F.2d 676, 691 (9th Cir. 1975)*; *United States v. Michigan, 471 F. Supp. 192, 278-80 (W.D. Mich. 1979)*. The Department of the Interior has established an administrative procedure through which Indian groups may request and receive federal recognition as Indian tribes. *See*, 25 C.F.R. § 83. A petition for federal recognition is required as a prerequisite to acknowledgement as an Indian tribe. *25 C.F.R. §§ 83.5*, *83.7*. These regulations were first promulgated in 1978. *James v. United States Department of Health and Human Services, 824 F.2d 1131, 1136 (D.C. Cir. 1987)*. Pursuant to these regulations, the department has established and staffed a "Branch of Acknowledgement and Research" which employs historians, anthropologists **[*3]** and genealogical researchers to evaluate petitions for federal recognition. The standards by which the Department determines tribal status are set forth in the regulations. *25 C.F.R. § 83.7*. In its original complaint, the LTBB not only recognized these standards as appropriate, but requested that the Court determine its status as an Indian tribe based upon the same standards.

The question presented by the State's motion is whether the Court ought to require the LTBB to use this established administrative route to tribal recognition, or whether it ought to undertake that highly complex, fact-specific inquiry on its own. The Sixth Circuit explained the purposes of the exhaustion doctrine in *Shawnee Coal Co. v. Andrus, 661 F.2d 1083, 1092 (6th Cir. 1981)*. In that case, the court held that exhaustion of

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administrative remedies was a prerequisite to the district court's jurisdiction over a suit involving the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201 et seq. The Sixth Circuit explained the policies behind the exhaustion doctrine as follows:

> The basic purpose of the exhaustion doctrine is to allow an administrative agency to **[*4]** perform functions within its special competence -- to make a factual record, to apply its expertise and to correct its own errors so as to moot judicial controversies. By limiting judicial interruption of agency proceedings, the doctrine also promotes a sensible division of tasks between the agency and the courts: parties are discouraged from weakening the position of the agency by flouting its processes and the courts' resources are reserved for review and resolution of those matters where a dispositive solution is unavailable in the administrative process. "Thus, the doctrine serves interests of accuracy, efficiency agency autonomy and judicial economy." Ezratty v. Commonwealth of Puerto Rico, 746 F.2d 770, 774 (1st Cir. 1981).
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> . . .
>
> Although exhaustion of administrative remedies, is typically required as a condition for judicial review, the requirement is not absolute. . . . Thus, exhaustion is not required if administrative remedies are inadequate or not efficacious, where pursuit of administrative remedies would be a futile gesture, where irreparable injury will result unless immediate judicial review is permitted, or where the administrative proceeding **[*5]** would be void.

Shawnee, 661 F.2d 1083, 1092-93 (citations omitted). In this case, the Court believes that those policies would be best served by allowing the Department of the Interior to consider the LTBB's status as an Indian tribe prior to this Court's consideration of their entitlement to treaty fishing rights.

In James v. United States Department of Health and Human Services, 824 F.2d 1132 (D.C. Cir. 1987), the court held that exhaustion of administrative remedies was necessary in a case where the plaintiff Indian group sought a declaratory judgment that it was an Indian tribe and directing the Department of the Interior to recognize it as such. 824 F.2d at 1135. The court reasoned that the determination of tribal status:

> should be made in the first instance by the Department of the Interior since Congress has specifically authorized the Executive Branch to prescribe regulations concerning Indian affairs and relations. 25 U.S.C. §§ 2, 9. The purpose of the regulatory scheme set up by the Secretary of the Interior is to determine which Indian groups exist as tribes. 25 C.F.R. § 83.2. That purpose would **[*6]** be frustrated if the Judicial Branch made initial determinations of whether groups have been recognized previously or whether conditions for recognition currently exist.

James, 824 F.2d at 1137.

This Court believes that the same reasoning requires the LTBB to present its bid for recognition as an Indian tribe to the Department of the Interior before attempting to secure treaty fishing rights in this Court. The determination of tribal status is one particularly within the Department's expertise. The question requires consideration of numerous historical, anthropological and genealogical issues which, although they are not entirely outside this Court's abilities, are better considered, at least in the first instance, by experts in those fields. The Department maintains a staff of individuals whose function is to decide these very issues, and that staff has done so on many occasions over the past several years. *See*, James, 824 F.2d at 1138. Moreover, as the court in *James* noted, "the factual record developed at the administrative level would most assuredly aid in judicial review should the parties be unsuccessful in resolving **[*7]** the matter; in the event that the dispute is resolved at the administrative level, judicial economy will be served." *Id.*

The Court is, of course, aware that certain earlier cases have held that federal recognition, and therefore exhaustion of the administrative remedy, is not a prerequisite to the enforcement of treaty rights. Mashpee v. New Seabury Corp., 592 F.2d 575 (1st Cir. 1979), *cert. denied*, *444 U.S. 866 (1979)*; United States v. Washington, 520 F.2d 676, 693 (9th Cir. 1975), *cert. denied*, *423 U.S. 1086 (1976)*. It is important to note that both of these cases involved

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controversies which began well before the Department of Interior promulgated the regulations at issue here, and before it established the procedure for tribal recognition contained in those regulations. These cases are thus distinguishable from the case at bar. *See*, *James at 1138*. An administrative procedure for answering this question now exists. That procedure did not exist when the First and Ninth Circuits issued their opinions in *Mashpee* and *Washington*. Thus, the judicial route to tribal recognition **[*8]** created in these cases is no longer necessary nor appropriate.

The LTBB argues that it should not be required to seek Department recognition because it seeks only to enforce its alleged treaty rights, and does not seek to receive other "statutory benefits" attendent upon tribal recognition. This argument is without merit. The applicability of the exhaustion doctrine depends not upon the relief sought, but upon the question presented. Essentially, the doctrine requires that certain questions be presented to administrative agencies because those agencies have special expertise in finding the proper answers. That is exactly the situation here. Whether the LTBB seeks only to obtain treaty fishing rights, or whether it also wishes to obtain benefits from the Bureau of Indian Affairs is irrelevant. In order to obtain either, it must establish that it is an Indian tribe. In order to establish that fact, it must seek recognition as a tribe from the Department of the Interior.

Because I find that exhaustion of administrative remedies is appropriate in this case, and because it is clear that the plaintiff has not yet exhausted those remedies, the State's Motion to Dismiss will be granted.

[*9] DATED in Kalamazoo, MI: August 3, 1988

RICHARD A. ENSLEN, U.S. District Judge

ORDER

In accordance with the opinion dated August 3, 1988;

IT IS HEREBY ORDERED that the State of Michigan's Motion to Dismiss is GRANTED, with prejudice, and that this case is CLOSED.

DATED in Kalamzoo, MI: August 3, 1988

RICHARD A. ENSLEN, U.S. District Judge