No. 01-794

In The

Supreme Court of the United States

IDAHO STATE TAX COMMISSION,

Petitioner,

v.

GOODMAN OIL COMPANY OF LEWISTON, an Idaho Corporation; and GOODMAN OIL COMPANY, an Idaho Corporation,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Idaho

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

The parties to this proceeding are correctly stated in the caption of the case. The Coeur d'Alene Indian Tribe (Tribe) was granted permission to file an *amicus curiae* brief with the Idaho Supreme Court. The Tribe was not allowed to participate in oral argument before the Idaho Supreme Court. The Tribe did not seek permission to intervene in this case until after the Idaho Supreme Court determined that the tax at issue is unconstitutional. The Tribe's petition for leave to intervene was not acted upon by the Idaho Supreme Court.

Goodman Oil Company and Goodman Oil Company of Lewiston are closely held Idaho corporations. Goodman Oil Company is the parent corporation of Goodman Oil Company of Lewiston.

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PROPOSED LEGISLATION

STATEMENT OF FACTS

The Idaho State Tax Commission (Commission) includes a significant misstatement of fact in its petition. The suggestion that Indians are free riders on State highways is erroneous. Congress provides funding to States for construction of State highways on Indian reservations, 23 U.S.C. § 120, and Congress provides funding to the Department of Interior, Bureau of Indian Affairs (BIA) for construction and maintenance of BIA and tribal roads on Indian reservations. 23 U.S.C. § 204.

The record in this case shows that from 1993 to 2003, the Idaho Transportation Department received or budgeted $56.8 million for road construction on State highways within the Coeur d'Alene Indian Reservation (Reservation). Of that amount, $43 million was received or budgeted from federal sources. By comparison, in 1997 and 1998, the Tribe received from the BIA a little less than $100,000 each year for maintenance of BIA and tribal roads on the Reservation.

Two factual omissions also warrant attention. In 1994, the Tribe and the Commission agreed the Tribe would remit fuel taxes to the Commission on gasoline sales made to non-Indians. The Tribe made the payments to the Commission until the Idaho Supreme Court declared the tax unconstitutional.

Second, Respondents were authorized by the Tribe to conduct business on the Reservation. The Tribe issued Goodman Oil Company a business license, and Goodman Oil Company of Lewiston has permission to use the license.

These facts show what the Commission ignores. A statutory scheme already exists that provides States with funding for road construction on Indian reservations. Congress would certainly want to debate the existing statutory scheme before it authorized any new tax on Indians.

REASONS FOR DENYING THE WRIT

A. The Issue Is Important, But Should Be Left For Congress To Decide.

Respondents agree that allowing States to tax fuel sold on Indian reservations raises difficult social and economic issues. This is because "the federal tradition of Indian immunity from state taxation is very strong and . . . the state interest in taxation is correspondingly weak." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 215, n.17 (1985).

The Idaho Supreme Court is the only court to squarely address the issue of whether the Hayden-Cartwright Act (Act), 4 U.S.C. § 104, authorizes States to tax fuel sold on Indian reservations. In *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (1995), and *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980), this Court recognized but did not decide the issue. All that can be said of *Matter of the State Motor Fuel Tax Liability of A.G.E. Corporation*, 273 N.W. 2d 737 (S.D. 1978), is that the South Dakota Supreme Court simply did not engage in a detailed analysis of the Act or apply the correct rules of construction.

The Idaho Supreme Court did analyze the Act in detail, and did apply the rules of construction applicable to State taxation of Indians. If changes are to be made, it is a matter best done by the Congress.

B. The Idaho Supreme Court Correctly Decided The Issue.

The Commission advances two criticisms of the Idaho Supreme Court decision. The Commission argues that the term "licensed trader" is almost always used to mean one licensed to trade with Indians and, therefore, use of the term in Section 10 of the Act is an indication that Congress wanted States to have authority to collect fuel tax on Indian reservations. Second, the Commission argues that Congress endorsed a 1940 administrative opinion when it re-enacted the Act in 1947 and 1956. The Idaho Supreme Court correctly rejected these arguments.

The Commission steadfastly ignores two rules of construction applicable to taxing Indians. First, States may tax Indians only when Congress has made its intention to do so unmistakably clear. *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103 (1998). Second, statutes are to be construed liberally in favor of Indians, with ambiguous provisions interpreted to their benefit. *Montana v. Blackfeet Tribe*, 471 U.S. 759 (1984).

The Idaho Supreme Court correctly determined that the Act itself does not unmistakably authorize the tax. The Act contains four sections using the term "reservation" or "reservations." Two of the four sections use the term "reservation" in conjunction with the term "Indian." The deliberate use and non-use of the word "Indian"

means Congress did not intend the tax. Congress could have unmistakably authorized the tax on Indians by simply using in Section 10 of the Act the same terms used in Sections 3 and 6 to regulate Indian affairs.

The Idaho Supreme Court also correctly determined that use of the term "licensed trader" is not a substitute for unmistakably clear authority to tax Indians. *Falls City Brewing Company v. Reeves*, 40 F. Supp. 35 (D. Ky. 1941), shows that the term did not mean only those licensed to trade with Indians. It is just as probable that the term "licensed trader" was a reference to distributors or sellers of goods on all federal reservations, including national parks and military reservations. At best, use of the term "licensed trader" is ambiguous.

Legislative history regarding the Buck Act shows that Congress did not intend to give States authority to tax fuel sales on Indian reservations. Congress adopted the Buck Act in 1940. Pub. L. 819, 54 Stat. 1059. Congress intended the Buck Act and the Hayden-Cartwright Act to govern the same "Federal areas." S. Rep. No. 1625 at 4-5, 76th Cong., 3d Sess. (1940). The Buck Act, 4 U.S.C. §§ 105-110, does not apply to Indian reservations. *Warren Trading Post Co. v. Arizona Tax Com'n*, 350 U.S. 685 (1965). It follows that in 1936 Congress did not intend the Hayden-Cartwright Act to apply to Indian reservations.

Several points weigh strongly against the Commission's position that Congress has adopted the 1940 opinion of the Solicitor of the Department of Interior. Had Congress intended to allow States to tax fuel sales on Indian reservations, some specific mention of regulating tribal affairs would appear in Congressional Reports for

1936 or in minutes of the floor discussions in one of the Houses. No such record of any Congressional debate exists. Forty years passed before States mentioned the Act in cases before the United States Supreme Court. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1979). Unmistakably clear authority to tax Indians would not lay dormant for forty years.

In 1994, the Commission itself concluded that the Act does not authorize the tax. The Commission's agreement to collect from the Tribe the tax on non-Indian fuel sales was unnecessary if the Act already authorized the tax on the Reservation.

And, finally, in 1998 and 1999, Congress considered but rejected two bills that would have allowed States to tax fuel sales on Indian reservations. H.R. No. 3966, 105th Cong., 2d Sess. (1998) and S. 550, 106th Cong., 1st Sess. (1999). New legislation would be unnecessary if, as the Commission argues, Congress authorized States to levy the tax in 1936.

The Idaho Supreme Court correctly determined that the Hayden-Cartwright Act is not unmistakably clear authority to tax fuel sales made on Indian reservations. The Act itself is ambiguous, at best, and ambiguities in tax statutes are construed in favor of Indians. This case does not warrant further review by the Court.

CONCLUSION

Respondents respectfully request that the petition be denied.

Respectfully submitted,

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