No. 16-1498

IN THE

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT
OF LICENSING,

Petitioner,

v.

COUGAR DEN INC., A YAKAMA
NATION CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE WASHINGTON SUPREME COURT

BRIEF OF *AMICI CURIAE* THE WASHINGTON OIL MARKETERS ASSOCIATION AND WASHINGTON ASSOCIATION OF NEIGHBORHOOD STORES IN SUPPORT OF PETITIONER

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A. INTRODUCTION

This brief is submitted on behalf of the Washington Oil Marketers Association ("WOMA") and the Washington Association of Neighborhood Stores ("WANS") in support of Washington State's petition seeking reversal of the decision of the Washington Supreme Court. This brief is filed with the consent of all parties pursuant to Rule 37(3)(a).[1]

B. INTEREST OF *AMICI CURIAE*

WOMA is a nonprofit trade association with individual and corporate members that market petroleum products in Washington State and associate members that sell products and services that support the petroleum industry. WOMA members account for nearly 80% of all

[1] Copies of the consent letters have been filed with the Clerk of the Court with this brief. In compliance with Supreme Court Rule 37(6), *amici curiae* represent that no counsel for any party authorized this brief in whole or in part, and that no person or entity, other than *amici curiae*, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief.

petroleum products sold in Washington State, including 68,000,000 gallons of heating oil to residential and industrial users.

WOMA is closely aligned with two regional trade associations: The Pacific Oil Conference ("POC") and the Western Petroleum Marketers Association ("WPMA"). WOMA is also a member of the national Petroleum Marketers Associations of America ("PMAA"), which represents petroleum marketers on national issues in Washington D.C.

WOMA is the only association in Washington State that focuses on all aspects of the petroleum marketing industry and monitors legislative and regulatory issues involving fuel, energy, alcohol, tobacco, transportation, the environment, and the state budget and taxes. WOMA also lobbies on behalf of petroleum marketers and oil heat dealers with state government agencies and the Washington State Legislature, and stays engaged

with state and national associations, including PMAA, WPMA, and POC.

WANS is a business organization that provides information and assistance to Washington State's convenience store industry on a wide variety of topics including legal, legislative, and regulatory issues to enable that industry to remain competitive in the marketplace.

C. STATEMENT OF THE CASE

WOMA/WANS adopt the Statement of the Case in Washington State's petition.

D. SUMMARY OF ARGUMENT

The legal incidence of Washington State's fuel tax occurs off the Native American reservations in that state. It applies to fuel suppliers. Cougar Den is such an off-reservation fuel supplier. Its activities in supplying fuel relate essentially to off-reservation activities.

At issue here is article III of the treaty with the Yakamas. It states:

> *And provided,* That, if necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them; as also the right, in common with citizens of the United States, to travel upon all public highways.

Yakama Treaty, art. III, 12 Stat. 951 (1855). That treaty between the United States and the Yakama Nation giving Yakama tribal members a right to travel without fees on public highways does not confer upon that tribe a "right to trade." In suggesting to the contrary, the Washington Supreme Court opinion contravenes Ninth Circuit precedent interpreting the same treaty language and long-standing principles of this Court in interpreting Native American treaties.

Further, the Washington court's interpretation will effectively confer tax-exempt status on tribal businesses that will blow gaping holes in the state's fuel tax

revenues and budgets. The opinion's analysis cannot simply be confined to fuel taxes and will also affect numerous other areas of taxation. This will provide unfair advantage to tribal businesses over nontribal business entities who must comply with state tax imperatives.

Review by this Court is crucial to avoid conflicting judicial treatment of the same federal treaty provision and to uphold key principles Native American treaty interpretation.

E. ARGUMENT

(1) Washington Fuel Taxes

Initially, critical to this Court's decision on Washington State's petition for a writ of certiorari is a clear understanding of the nature of Washington's fuel tax and its legal incidence as to entities like Cougar Den. *See*

generally, Auto. United Trades Org. v. State, 357 P.3d 615 (Wash. 2015) ("*AUTO*").

The fuel market in Washington involves a four-tiered distribution chain. *Squaxin Island Tribe v. Stephens*, 400 F. Supp. 2d 1250, 1252 (W.D. Wash. 2005); *see, e.g.*, RCW 82.36.010(12), (13), (17). Suppliers, also called licensees, are the refineries, producers, or importers that produce, blend or import fuel in Washington. *Squaxin*, 400 F. Supp. 2d at 1252. Distributors transport fuel between suppliers and retailers. *Id.* Retailers sell fuel to consumers. *Id.* Consumers purchase fuel from the retailers for use in their vehicles. *Id.*

Suppliers refine fuel or bring fuel into Washington State by pipeline, cargo vessel, and ground transportation. *Squaxin*, 400 F. Supp. 2d at 1252. Distributors transport the fuel between suppliers, usually by purchasing fuel from suppliers at a "terminal rack," which is the platform

or bay at which motor vehicle fuel from a refinery or terminal is delivered into trucks, trailers, or rail cars. *Id.* Although a state cannot impose a tax on tribal activities occurring within a reservation,[2] activities outside reservation boundaries are subject to a state's general tax laws. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 146-49 (1973) (upholding state gross receipts tax imposed on tribe's ski resort operated off-reservation). A fuel tax collected from suppliers or distributors operating off-reservation that is not required to be passed down the distribution chain is a lawful state tax, and a tribe and its members are not immune from paying it. *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005) (upholding state fuel tax because legal incidence fell on distributors operating off-reservation). In cases

[2] *See, e.g., McClanahan v. State Tax Comm'n of Ariz.,* 411 U.S. 164, 165-66, 171-73 (1973) (invalidating state income tax imposed on tribal member's income earned on reservation).

assessing whether a tribe is immune from state taxation, this Court clarified that the "legal incidence" of a tax – where and upon whom the tax is being imposed – is the determining factor. *Id.* at 101, *citing Okla. Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 458-60, 462-64 (1995). The concept of tax incidence is critical to understanding the present case because the legal incidence of a tax determines whether there is a valid claim for preemption or immunity. If a tax is imposed on a distributor and is *voluntarily* passed through the chain of distribution as part of the cost of doing business, the incidence of the tax falls on the distributor, and not on any of those subsequent purchasers such as retailers or consumers. *Wagnon*, 546 U.S. at 103. Thus, those subsequent retailers and consumers are not entitled to exemption from those taxes simply because they are doing their business on tribal land, because the tax is not imposed for activities taking place on tribal land. *Id.*

As the case law on tribal immunity and fuel taxation has evolved, the Washington Legislature shifted the incidence of Washington's fuel tax. In 1994, the fuel tax was collected from distributors, who were *required* to pass the tax down the distribution chain, rather than having the option to do so. Laws of 1983, 1st Ex. Sess., ch. 49, § 26; *see also,* Laws of 1998, ch. 176, § 7. The Colville and Yakama tribes sued the State, arguing that the fuel tax was being imposed unlawfully on sales to tribal members on reservation land because the law required the tax to be passed forward and thus the real incidence of the tax fell on tribal retailers on the reservation. These lawsuits resulted in consent decrees between the State and the two tribes under which the tribes agreed to track fuel sales to members versus nontribal members. In the consent decrees, the State agreed to repay the tribes the amount of fuel taxes paid on fuel purchased by tribal members from on-

reservation retailers.[3] The tribes would tell the State the number of gallons of fuel sold to tribal members, and the State would calculate the tax refund based on the total number of gallons. *Id.* Pursuant to legislative direction, Laws of 1995, ch. 320, §§ 2, 3, the State entered into agreements with other tribes on a basis akin to the consent decrees.

Shortly after the 1995 fuel tax amendments, the State abandoned the "counting gallons" approach because it required substantial record-keeping requirements and imposed an administrative burden on the tribes, and instead entered into agreements based upon a formula.

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[3] The Yakamas, one of the tribes referenced above, refused to remit to Washington State the fuel taxes they collected. News accounts indicated that the amount withheld was as much as $25 million. http://seattletimes.com/State-Yakama-Nation-agree-on-simpler-fuel-tax-system (Nov. 23, 2013). The State sued the Yakamas to recover the past due taxes. The State settled with the Yakamas for $9 million. Simultaneously, the State entered into an agreement with the Yakamas in which the State collects the fuel tax and remits 75% of the collections to the tribe. The Yakamas agreed to pay the State $9 million but that sum will be paid from the tax revenue the Yakamas received from Washington State.

Under these agreements, the State agreed to disburse fuel tax revenues to the tribes based on the number of enrolled local tribal members, multiplied by the average per capita consumption of fuel statewide, disbursing to the tribes 100% of the fuel tax revenue applicable to this amount of fuel. The State entered into such agreements with numerous tribes.

In 1999, the Washington Legislature changed the point of collection for the fuel tax from distributors to suppliers in order to increase administrative efficiency and to provide greater revenues for the State. Laws of 1998, ch. 176, § 1(3). With respect to the legal incidence of the tax, however, the law still required that the tax to be passed down the distribution chain to retailers and consumers, instead of simply allowing the suppliers to choose whether to pass on the tax. *See, e.g., id.,* §§ 48(1), 81. The Legislature made no changes to the existing

tribal agreements, and the authorization to enter into such agreements remained in place. *See id.*, §§ 48(2), 81. In the early 2000s, the Squaxin and Swinomish tribes sued the State arguing that the tribes were completely immune from Washington's fuel tax, not just for sales of fuel to tribal members but for sales to *all* fuel purchasers on tribal land. They asserted that under the then-existing law,[4] the legal obligation to pay the tax fell on the retail tier of the distribution chain, including tribal retailers. *Squaxin*, 400 F. Supp. 2d at 1251. The tribes argued that because there was no consumer-level enforcement mechanism, and because retailers were not entitled to refunds if consumers failed to pay the tax, the legal incidence of the tax fell on retailers. *Id.* at 1255-57.

[4] *See* former RCW 82.36.020. However, the law also stated that the ultimate incidence of the tax was intended to fall on consumers. *See* former RCW 82.36.407(1).

Relying on *Chickasaw*, a case in which the legal incidence of a state fuel tax also fell on tribal retailers, the district court in *Squaxin* enjoined the State from collecting fuel taxes on "the Tribes' retail sales of fuel products on Tribal land." *Id.* at 1262.[5] Because the State was not permitted to tax tribes for transactions on tribal land, the court concluded that Washington fuel taxes, the legal incidence of which fell on tribal retailers, were illegal. *Id.*

In December 2006, this Court issued its decision in *Wagnon*, upholding Kansas' fuel tax because the tax was explicitly imposed on off-reservation sales to distributors and did not require those distributors to pass the tax

[5] In reaching its ruling, the *Squaxin* court noted that Washington's fuel tax (at that time) was legally required to be passed down the distribution chain to retailers. *See Squaxin*, 400 F. Supp. 2d at 1252-53. Suppliers and distributors would "simply collect and remit the funds" and would be "reimbursed for any deficiency." *Id.* at 1252. In contrast, retailers were not legally required to pass the fuel tax on to consumers, and were not entitled to a refund if a consumer failed to pay the tax. *Id.* at 1252-53.

forward in the distribution chain. *Wagnon*, 546 U.S. at 103. Because the legal incidence of the tax fell off-reservation, the tribes were not immune from the tax simply because it was included by distributors in the price of the fuel they sold on-reservation. *Id.*

In 2007, to remedy the issues raised in the *Squaxin* ruling, Washington shifted the full burden of its fuel tax to suppliers. RCW 82.36.020(1); RCW 82.38.030(1). Under this statute, the legal incidence of Washington's fuel tax now falls expressly on suppliers and is imposed on the first taxable event in Washington. *See* RCW 82.36.010(12), .020(1), .026(5); RCW 82.38.030(1), (7), .035(6). *None* of the activities constituting the first taxable event – removing fuel from a refinery, removing fuel from the terminal rack, importing fuel from another state, or blending fuel – is conducted on any tribal lands. There is no requirement that the cost of the tax be passed down, but suppliers are permitted to include "as a

part of the selling price an amount equal to the tax." RCW 82.36.026.[6]

This 2007 change in Washington law shifted Washington's fuel tax regime from one similar to Oklahoma's in *Chickasaw*, where the legal incidence fell on tribal retailers, to one like Kansas' regime in *Wagnon*, where the legal incidence fell on entities like Cougar Den located off tribal lands.[7]

Cougar Den is a fuel supplier, subject to Washington's fuel tax in the same way any other fuel distributor that bought fuel in another state and brought it into

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[6] The fuel tax is imposed at the first of the following transactions: (1) when fuel is removed from the terminal rack by a supplier and sold to a distributor; (2) when fuel is produced; (3) imported; or (4) blended in the State. RCW 82.36.020(2); *see also,* RCW 82.38.030(7). While the fuel tax is included in the price of fuel sold and delivered to tribal fuel retailers, the legal incidence of the tax is placed on suppliers (who are non-Indian) and the taxable event arises off reservation.

[7] Washington consolidated its treatment of gasoline and diesel fuels into a single code chapter. Laws of 2013, ch. 225; Laws of 2015, ch. 228, § 40. That statutory change, effective in 2016, does not apply to the events in this case.

Washington for distribution would be subject to taxation. The legal incidence of Washington's fuel tax as to Cougar Den occurs off-reservation.[8]

(2) The Washington Supreme Court Decision Is Contrary to Ninth Circuit Precedent Interpreting Travel Rights in Indian Treaties

WOMA/WANS concur in Washington State's argument that review is merited here because the opinion of the Washington Supreme Court is entirely contrary to the

[8] The record indicates that Cougar Den is a private wholesale fuel company owned by Richard "Kip" Ramsey, a Yakama tribal member. It never applied for or held any type of fuel license from Washington State in order to acquire gasoline or diesel fuel wholesale, although it obtained an Oregon fuel dealer's license in 2012, using that license to purchase gasoline and diesel wholesale in Oregon. It avoids Oregon fuel taxes because it exports that fuel. ORS 319.240.

In March 2013, Cougar Den began exporting fuel from Oregon into Washington. It contracted with a trucking company, KAG West, to pick up its fuel in Oregon and transport it into Washington. Cougar Den then imported millions of gallons of fuel in 2013 without paying Washington taxes.

Cougar Den provided more than 90 percent of its fuel to two gas stations called Wolf Den and Kiles Korner in Wapato, Washington. Wolf Den and Kiles Korner sell retail fuel to the general public. Cougar Den provided the remainder of the fuel to businesses owned by Ramsey in White Swan, Washington. Before April 2013, these retailers purchased fuel from Washington-licensed fuel suppliers who paid Washington fuel taxes.

long-standing interpretation by the Ninth Circuit of identical treaty travel provisions. That court misconstrued the plain language of the Yakama treaty to find a "right to trade" that was *nowhere* to be found in the treaty language, contravening this Court's long-standing emphasis in *Chocktaw Nation of Indians v. U.S.*, 318 U.S. 423, 432 (1943); *Nw. Bands of Shoshone Indians v. U.S.*, 324 U.S. 335, 353 (1945) on the enforcement of plain treaty language as written. *See, e.g.*, *Cougar Den, Inc. v. Wash. State Dep't of Licensing*, 392 P.3d 1014, 1019 (Wash. 2017) ("We hold that the right to travel provision in the treaty protects the Tribe's historical practice of using the roads to engage in trade and commerce."). Review is merited in this case under Rule 10(b) because the decision of the Washington Supreme Court on the interpretation of an important provision in an Indian treaty conflicts with decisions of

the United States Court of Appeals for the Ninth Circuit on the same point.

Simply put, there is no right to trade in the treaty at issue. Yakama tribal members had the right to travel on public highways like any other citizens, free of specific fees for such rights; no such fee was imposed here.[9]

The Washington court's analysis cannot be squared with Ninth Circuit precedent *rejecting* it.[10] In particular, the Ninth Circuit rejected the analogous argument in

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[9] As noted *supra*, Washington imposes a tax on wholesale fuel when it enters the state or is removed from a bulk facility in the state, and the person taxes is the fuel owner. RCW 82.36.010(16), 82.38.020(26), 82.36.020(2), and 82.38.030(7). The agency's final order specifically found that the tax is "not a charge for Cougar Den's use of public highways. … Cougar Den is being taxed for importing fuel." Final Order CL 20.

[10] Indeed, apart from a different product being at issue, the facts in *King Mountain* and this case are essentially identical. King Mountain Tobacco Co. was owned by an enrolled Yakama tribal member. It initially bought tobacco in North Carolina and processed it there. It then brought the processed product back to Washington State where it was then sold on the reservation and throughout the state and 16 others. King Mountain asserted it was exempt from a Washington State health-related assessment pursuant to a Master Settlement Agreement between the states and tobacco manufacturers, or, alternatively, a tax in lieu of that assessment. 768 F.3d at 991-92.

interpreting the *same provision* of the *identical treaty* in *King Mountain Tobacco Co., Inc. v. McKenna*, 768 F.3d 989 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 1452 (2015). In addressing article III of the treaty, the Ninth Circuit stated: "As shown by the plain text of Article III, the Treaty reserved to the Yakama the right 'to travel upon all public highways.' Nowhere in Article III is the right to trade discussed." *Id.* at 996. That court further concluded "the Treaty is not an express federal law that exempts King Mountain from state economic regulations" and "there is no right to trade in the Yakama Treaty." *Id.* at 997, 998.

The *King Mountain* court's analysis flowed from a number of prior Ninth Circuit decisions analyzing the very same provision of the very same treaty. *See Cree v. Waterbury*, 78 F.3d 1400 (9th Cir. 1996) (trucking license fees were subject to Yakama treaty); *Cree v. Flores*, 157 F.3d 762 (9th Cir. 1998) (truck license and overweight

fees subject to Yakama treaty); *Ramsey v. U.S.*, 302 F.3d 1074, 1080 (9th Cir. 2002) (upholding federal diesel fuel tax from Yakama treaty challenge).

The Washington court also misread the Ninth Circuit opinion in *United States v. Smiskin*, 487 F.3d 1260 (9th Cir. 2007). *Smiskin* does not aid Cougar Den's position. In *Smiskin*, a criminal prosecution for trafficking in illegal cigarettes, the Ninth Circuit held that a pre-transport notice requirement for moving cigarettes was a condition on travel that was inconsistent with article III of the Yakama treaty, 487 F.3d at 1264-66, relying on its earlier rulings in the *Cree* cases that the treaty preempted state truck license fees. No such travel-related fee is at issue here. Moreover, the *Smiskin* court *nowhere* recognized a broad-based right to travel as did the Washington court. *See also*, *United States v. Fiander*, 547 F.3d 1036 (9th Cir. 2008).

Review of the Washington Supreme Court opinion is merited under Rule 10(b).

(3) The Washington Supreme Court Decision Is Contrary to This Court's Precedent on Taxation of Tribal Activity Off-Reservation

This Court should also grant review in this case under Rule 10(c) as the Washington court has decided an important point of federal Native American law in a way conflicting with this Court's decisions. The Washington court not only misapplied this Court's treaty interpretation principles, as noted *supra*, it failed to heed a cardinal principle of this Court's Native American treaty jurisprudence that tribal members acting outside of the reservation are subject to the very same taxation obligations as are nontribal citizens of a state. "Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Mescalero Apache*

Tribe, supra at 148-49. Again, the *very same treaty* has been interpreted by this Court to support this analysis. In *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980), this Court also rejected the notion that a Yakama tribal concern could sell cigarettes free of Washington State taxation, stating that a "State may sometimes impose a nondiscriminatory tax on non-Indian customers of Indian retailers doing business on the reservation." *Id.* at 151.[11]

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[11] In *Colville*, federally licensed Native American traders engaged in on-reservation sales, predominantly to nontribal members, of cigarettes supplied by several Washington tribes. The tribes imposed a tax largely on cigarette purchasers. Washington State also imposed a tax on cigarette purchasers. The low sale price of untaxed cigarettes was the only reason purchasers journeyed to the reservation. If the Washington tax were collected, on-reservation cigarette purchases by nontribal members would end. The tribes argued that while both the tribe and Washington State had an interest in taxing to raise revenue, federal law supporting tribal self-determination and economic development preempted the State's interest. This Court rejected both arguments.

This Court held that the State could tax cigarette sales by a tribe to non-Indians and nonmember Indians even though sales to tribal members were not taxable by the State and the tribe imposed its own tax. *Id.* at 155-56, 160-61. The state taxes were not preempted by federal law and did not interfere with tribal self-government. *Id.* at 155-56. The State could legitimately seize cigarettes off-

Left unaddressed, the Washington court's decision contravenes this Court's *Mescalero Apache Tribe* decision, and exempts tribal members from state tax law in the guise of interpreting a federal treaty that merely secured for Yakama tribal members a right to "travel upon all public highways" in common with citizens of the United States. The Washington court's decision not only forestalls state taxation of Cougar Den's importation of wholesale fuel, it will have a profound impact on a variety of state tax regimes and will provide a huge competitive disadvantage to competitors of tribal businesses who would enjoy tax exempt status. News accounts of this case have indicated that favored retailers enjoyed a 20 cent per gallon advantage over other retailers when Washington State's fuel tax was at 37.5 cents per

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reservation that failed to meet Washington State taxation requirements. *Id.* at 161-62.

gallon.[12] That tax rate increased since the time of the proceedings below.

WOMA's members who purchased fuel in Oregon would have to obtain a fuel importer license, and pay Washington's fuel tax. Cougar Den, and any other similarly situated tribal fuel importer,[13] would not. WOMA members would be competitively disadvantaged. State fuel tax revenues devoted to highway maintenance

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[12] http://www.yakimaherald.com/ news/ local/ gas- tax- fuels- debate-between-yakama-nation-state/article_8a9006b8-0116-11e5-b9b1-d75098f93ee7.html; http://www. yakimaherald.com/news/ business/local/does-state-gas-tax-apply-on-yakama-reservation-judge-will/article_425f31a2-2ddf-11e5-9941-3fff12e36503.html; http://www.yakimaherald.com/news/crime_and_courts/judge-s-ruling-expected-to-favor-treaty-rights-in-gas/article_866c7922-30c8-11e5-b81c-d7d4d9013cea.html.

[13] The incentive for other tribal fuel importers and other wholesalers to enter this market is patent. This is not a theoretical concern. The Nez Perce tribe has a similar treaty provision. 392 P.3d at 1024 n.11. Indeed, as the Washington court dissent noted: "A simple extension of the majority's logic would allow *nontribal members* to avoid the imposition of state use, excise, or sales tax on goods they consume through a contrived transport by Yakama Nation or Nez Perce tribal members." *Id.* (emphasis in original) (Fairhurst, J., dissenting). Tribal governments in Washington already benefit from compacts paying them a share of fuel tax revenues. *See AUTO*, *supra*. An integrated tribal fuel importer/wholesaler/retailer operation would put nontribal fuel operations out of business.

and construction would also suffer. Wash. Const. art. II, § 40; RCW 46.48.070 (prescribing that fuel tax revenues must be placed in a dedicated motor vehicle fund and appropriated only for transportation purposes.

Similarly, WANS would be disadvantaged in tobacco sales. Tribal businesses could circumvent Washington State's high tobacco taxes, running afoul of contrary Ninth Circuit precedent.[14]

Review of the Washington Supreme Court decision is merited under Rule 10(c).

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[14] *E.g.*, *King Mountain*, 768 F.3d at 998 (state cigarette escrow payments); *U.S. v. King Mountain Tobacco Co., Inc.*, 2015 WL 4523642 (E.D. Wash. 2015) (federal tobacco assessments); *King Mountain Tobacco Co., Inc. v. Alcohol & Tobacco Tax & Trade Bureau*, 996 F. Supp. 2d 1061 (E.D. Wash. 2014), *rev'd*, 843 F.3d 810 (9th Cir. 2016); *Yakama Nation v. Gregoire*, 680 F. Supp. 2d 1258 (E.D. Wash. 2010), *aff'd*, 658 F.3d 1078 (9th Cir. 2011). *See also*, *Matheson v. Wash. State Liquor Control Bd.*, 130 P.3d 897 (Wash. App.), *review denied*, 158 Wn.2d 1023 (Wash. 2006) (upholding state cigarette excise tax on unlicensed Native American retailer selling cigarettes to other tribes).

F. CONCLUSION

The Washington Supreme Court's extreme interpretation of the Yakama treaty should be reversed. It will effectively blow gaping holes in the fuel tax revenues and transportation budgets of the states. It will allow tribal fuel suppliers an unfair advantage over nontribal business competitors, and create a precedent for tribal retailers of other products that this Court should not countenance.

DATED this 17th day of July, 2017.

Respectfully submitted,

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