

IN THE SUPREME COURT OF THE UNITED STATES

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No. 16-1498

WASHINGTON STATE DEPARTMENT OF LICENSING, PETITIONER

v.

COUGAR DEN, INC.

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ON WRIT OF CERTIORARI TO THE  
WASHINGTON SUPREME COURT

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting petitioner and requests that the United States be allowed ten minutes of argument time. Petitioner has consented to an allocation of ten minutes of its argument time to the United States.

This case concerns Article III of the Treaty of June 9, 1855, between the United States and the Yakama Nation of Indians, 12 Stat. 952-953, which secures to the Yakamas the "right, in common with citizens of the United States, to travel

upon all public highways.” The question presented is whether Article III precludes application to Yakama tribal members of a tax imposed by the State of Washington on fuel purchased out-of-state and imported into Washington, as part of a comprehensive state scheme that also imposes the tax on fuel removed from an in-state terminal or refinery.

The United States has an interest in the proper interpretation of treaties between the federal government and Indian tribes, in light of both the United States’ own interests as a party to such treaties and its special relationship with the Indian signatories whose rights are secured under such treaties. At the Court’s invitation, the United States filed an amicus brief at the petition stage of this case.

On August 16, 2018, the United States filed a brief as amicus curiae supporting petitioner. In its brief, the United States argues that Article III of the 1855 Treaty does not exempt respondent from paying Washington’s motor-fuel tax. U.S. Br. 12-31. Our brief explains that Washington’s motor-fuel tax does not infringe on tribal members’ right to travel upon the public highways in common with others. Rather, it is a tax on the possession of goods in Washington outside the Tribe’s Reservation, which falls within the State’s taxing authority and is imposed on respondent in common with others who undertake the

first possession of motor fuel in the State, whether that first possession occurs on a highway or elsewhere. Id. at 18-21.

Although the United States is often a party to cases involving questions about the scope of tribal treaty rights, it has also participated as amicus curiae in oral argument in such cases. Oklahoma Tax Comm'n v. Chickasaw Nation, 515 U.S. 450 (1995); South Dakota v. Bourland, 508 U.S. 679 (1993); Puyallup Tribe, Inc. v. Dep't of Game of State of Washington, 433 U.S. 165 (1977). The government's participation in oral argument will provide the Court with the federal perspective in this case, and division of the argument time will therefore materially assist the Court in its consideration of the case.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

SEPTEMBER 2018