The Wisconsin Court of Appeals
District

21-AP-1378 -CR

State of Wisconsin,
Plaintiff-Respondent

v.

Douglas Lyle House
Defendant-Appellant

Appeal from The Circuit Court of Brown County
The Honorable Thomas J. Walsh, presiding

Brief of Appellant Douglas Lyle House

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Statement of the Issues

Congress has asserted an absolute authority to regulate the affairs of the Oneida Nation, and delegated criminal jurisdiction to the State of Wisconsin. This plenary authority is found nowhere in the Constitution, or in treaties with the Oneida Nation. Congress has used this purported plenary power to grant criminal just diction over the oneida to the State of Wisconsin. Is this delegation of jurisdiction constitutional?

Statement on Oral Argument and Publication

At best, the field of Indian Law is a patchwork of Constitutional law, treaties, governmental policy, and the interactions between multiple sovereigns. At its worst, it is a schizophrenic body of law based on incompatible and doubtful assumptions, and an ugly race-based theory of plenary power. *See United States v. Lara*, 541 U.S. 193, 215, 219, 124 S. Ct. 1628, 158 L. Ed. 2d 420 (2004)(Thomas, J., Concurring); *United States v. Bryant*, 136 S. Ct. 1954, 1968, 195 L.Ed. 317, 579 U.S. 140 (2016)(Thomas, J., Concurring). Mr. House would welcome the opportunity to discuss these complex issues with the court.

If Mr. House's interpretation of the United States Constitution, treaties with the Oneida, and Supreme Court caselaw is correct, much of the field of Indian Law from the previous 150 years would be invalidated. Such a decision demands publication.

Statement of Facts and the Case

Long before European settlers came to the shores of America, the Oneida Nation inhabited roughly six million acres in what is now central New York State.[1] The Oneidas were one of six nations of the Haudenosaunee (Iroquois), the most powerful Indian Confederacy in the Northeast at the time of the revolution.[2] They were shrewd diplomats, whose military might controlled all the major trade routes in the northern half of the continent.[3] When the European powers came to the shores of North America, the Oneida entered into treaties with these foreign powers. The earliest of these treated was entered into in 1613.[4]

The Oneida's political system was admired by many of the founding fathers, including Thomas Jefferson and Benjamin Franklin.[5] The primary focus of the Oneida Government is to promote peace and prevent violence.[6] Peace is defined as the active striving of humans for the purpose of establishing universal justice.[7] When an individual commits an offense, the

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[1] *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 230 (1985).

[2] *Id.*

[3] John Tahsuda, *The Oneida Land Claim: Yesterday and Today,* 46 Buff. L. Rev. 1001, 1002 (1998)

[4] Robert W. Venables, *Some observations on the Treaty of Canandaigua, in* Treaty of Canandaigua 1794: 200 Years of Treaty Relations between the Iroquois Confederacy and the United States 24 (G. Peter Jemison & Anna M. Schein eds., 2000).

[5] *Id.*

[6] Carrie E. Garrow, *Treaties, Tribal Courts, and Jurisdiction: The treaty of Canandaigua and the Six Nations' Sovereign Right to Exercise Criminal Jurisdiction*, 2 J. Ct. Innovation 249, 263 (2009)

[7] *Id.*

focus of justice is on restoring the victim and the offender to a Good Mind and restoring peace.[8]

The Oneida believed the American colonists shared these same values and those of freedom and liberty. This led to them allying with the colonists against the British in the Revolutionary War.[9] Recognizing the importance the Oneida's support, the United States promised the Oneidas would be secure "in the possession of the lands on which they are settled".[10] This promise was reaffirmed in the Treaty of Fort Harmar and of Canandaigua.[11,12]

In 1788, the State of New York entered into a "treaty" in which it purchased the vast majority of the Oneida land, reserving approximately 300,000 acres for the Oneidas.[13] In 1795, the State of New York purchased the remaining Oneida lands despite the federal government clearly prohibiting any purchase of Indian land not conveyed pursuant to the treaty power of the United States.[14]

Due to increasing encroachment from Europeans and colonial settlers, the majority of the Oneida Nation moved to the Green Bay area, in what would become Wisconsin. An Oneida delegation arrived in Green Bay in 1821 and negotiated with the Menominee and Ho-Chunk nations for 860,000 acres of land, and

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[8] *Id*. at 269

[9] Tahsuda, *Supra* note 3 at 1002

[10] *Treaty of Fort Stanwix*, October 22, 1784, 7 Stat. 15.

[11] *Treaty of Fort Hamar*, January 9, 1789, 7 Stat. 33

[12] *Treaty of Canandaigua*, November 11, 1794, 7 Stat. 44.

[13] *County of Oneida v. Oneida Indian Nation*, 470 U.S. at 231

[14] *Id*. at 231-232

purchased an additional 6.72 million acres in 1822.[15] The Menominee and Ho-Chunk disputed these treaties. The United States mediated this conflict, and in the United States's 1831 Treaty with the Menomonies, the dispute was settled, leaving the Oneida Nation with just 500,000 acres of land.[16] In 1838, the United State's Government purchased more of the Oneida's land, reducing the Oneida Nation's land to a mere 65,400 acres. Adjusting for inflation to the present year, the Federal Government paid the Oneida $2.47 per acre.

The European powers, colonial governments, and the early government of the United States all recognized the Oneida as a sovereign nation, and engaged in treaty making with it. In 1871, Congress passed a statute stripping all of the Native American Nations of their sovereignty, declaring "[n]o Indian nation or tribe within the territory of the United States Shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty".[17]

Congress, using its new self-created authority, began a full legislative onslaught against the Native American Nations. In 1885, Congress passed the Major Crimes Act which overturned the holding in *Ex Parte Crow Dog*; creating jurisdiction in federal court for certain crimes committed by natives against natives "Indian lands".[18] This was followed by the General Allotment Act, which divided and parceled the lands reserved for Indian

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[15] Oneida history, Milwaukee Public Museum, https://www.mpm.edu/content/wirp/ICW-156 (last visited Oct 26, 2021).

[16] *Id*.

[17] 25 U.S.C. §71

[18] *The Major Crimes Act* 18 U.S.C. §1153

use, and allowed white settlers to obtain surplus parcels.[19] Allotment was justified as a means of accomplishing the then current policy of assimilation.[20] The *Dawes Commission* was created and empowered to negotiate allotment agreements with Native American Nations.[21] When the Commission failed, Congress added further provisions to coerce the Native American Nations into selling their lands.[22] As the Native American Nations continued to resist selling their territory, Congress passed the Curtis Act of June 28, 1898. The Curtis Act "provided for forced allotment and termination of tribal land ownership without tribal consent unless the tribe agreed to allotment. It also made tribal laws unenforceable….[and] abolish[ed] all tribal courts in Indian Territory."

The objectives of allotment were simple and clear cut: to extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Native Americans into the society at large.[23] Allotment was the first step in a plan ultimately aimed at disestablishment of reservations and Congress, to a man, believed the reservation system would cease within a generation. *McGirt v. Oklahoma*, 140 S.Ct. 2452, 2464-65 (2020).

In spite of the socio-economic shadow war the United States has waged against the Oneida, the Oneida persist today. They maintain their boundaries of the 1838 treaty. The Oneida Nation maintains its own constitution, judiciary, school system,

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[19] 25 U.S.C. §331 *et seq*.

[20] *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1441 (D.C. Cir. 1988).

[21] *Id.*

[22] *Id.*

[23] *County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation,* 502 U.S. 251, 254 112 S.Ct. 683 (1992).

and offers the member of its Nation many services. The Oneida, as they always have, still maintain and affirm their sovereign status as an independent nation.

Douglas House is a registered member of the Oneida Nation. In June of 2018, he was residing within the boundaries of the Oneida Nation. Mr. House's granddaughter, Angelina was living with Mr. House at that time. (R. 66:81). On June 8, 2018, Angelina invited her friend C.M. over the the home. (R.66:83). C.M. is also a registered member of the Oneida nation. Angelina's brother, and several of their cousins were at Mr. House's home as well. (R.66:83). Everyone spent the night. (R.66:89-90). C.M. alleged that after she fell asleep, Mr. House led her to his room, and when she woke up, he was kissing her arm and touched her breast. (R.66:92). C.M. and Angelina left the house, and the next day, C.M. reported the incident to the police. (R.66:96-98).

A criminal complaint was filed on November 16, 2018 charging Mr. House with single count of second degree sexual assault. (R.1:1). The case proceeded to trial on September 4, 2019. The jury found Mr. House guilty of the sole count. (R.50:1). Mr. House was sentenced to five years of initial confinement and ten years of extended supervision. (R.82). Mr. House filed a timely notice of intent to pursue post-conviction relief. (R.81). On May 21, 2021, Mr. House filed a post-conviction motion alleging the State of Wisconsin lacked the jurisdiction to try a member of the Oneida Nation for an alleged crime against a member of the Oneida Nation on Oneida Nation land. (R.98). The State did not file a response, and the circuit court denied Mr. House's motion on July 20, 2021. (R. 100). Mr. House filed a timely notice of appeal. (R.101).

Argument

In a small way this case is about a man who is alleged to have mistreated a young woman. These narrow view of the case fails to see the forrest, focusing on a single tree.

This case truly represents the interaction between three sovereigns, the promises made between them, and a chance for our governments to begin to honor the multitude of broken promises.

The sovereignty of the Oneida Nation predates Wisconsin's statehood. It predates the United States Constitution, the Articles of Confederation, and the Declaration of Independence. The Oneida were a sovereign nation long before European conquerors first set foot on this continent, and the Oneida maintain their sovereignty today.

European colonists, and subsequently the United States, have always desired the land and prosperity of the Native American Nations. First they engaged in taking the Native American's land in one-sided treaties. These treaties were frequently ignored, and the colonial governments seldom punished those who broke these treaties. Later the fledgling United States tried to regulate Native American Nations through the Articles of Confederation.[24]

When the Constitutional Convention met to replace the ineffective Articles of Confederation, James Madison proposed to give congress plenary power over the Native American Nations.[25] This proposal was rejected;[26] Congress has only the authority to

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[24] The Articles of Confederation art. IX, para. 4 (Nov. 15, 1777)

[25] Mark Savage, *Native Americans and the Constitution: The Original Understanding*, 16 AM. INDIAN L. REV. 57, 73 (1991).

[26] *Id.* at 79.

regulate commerce with the Native American Nations.[27] Under the new Constitution, the United States continued to engage in treaties with the Native American Nations, taking their land and moving the nations ever further west.

After a series of Supreme Court decisions which upheld the Native American Nations sovereignty and their ability to maintain order and peace,[28] the federal government switched tactics. Congress declared the Native American Nations were no longer independent sovereigns nations, and the federal government could no longer engage in treaties with them.[29] Shortly thereafter, the Supreme Court declared, in what can only be described as a racist, European supremacist reasoning, that Congress must have plenary power over the Native American Nations, as it has never existed elsewhere, nor has it ever been denied, and the Native Americans were dependent on the national government for the food and political rights.[30]

Congress went on to wage an undeclared socio-economic war against the Native American Nations. The objectives were simple and clear cut: extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into the society at large.[31]

The allotment era failed to destroy many of the Native American nations. The Oneida Nation still survives, and

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[27] U. S. Const. Art. I, §8, CL 3

[28] *See*, e.g. *Ex Parte Crow Dog*, 109 U.S. 556, 3 S.Ct. 396, 27 L.Ed. 1030 (1883)

[29] 25 U.S.C. §71

[30] *United States v. Kagama*, 118 U.S. 375, 384-85, 6 S.Ct. 1109, 30 L.Ed. 228 (1886).

[31] *Oneida Nation v. Vill. Of Hobart*, 968 F.3d 664, 669, (7th Cir. 2020).

maintains the same borders it did after its final treaty with the United States Government in 1838.

In 1953, Congress grew concerned over the perceived lawlessness on reservations, and was looking to slash the budget of the Bureau of Indian Affairs.[32] Rather than encouraging cooperative agreements between the nations and state law enforcement, deputizing more state officials, or encouraging the nations to re-develop their own courts and law-enforcement,[33] Congress passed Public Law 280.[34] Public Law 280 mandated six states would assume criminal jurisdiction over Native Americans in Native American Territory within the State's borders.[35] Public Law 280 was later amended to allow the other 44 states to assume jurisdiction, provided the State and the Native American Nations consent to the transfer of jurisdiction.[36] Few Native American Nations have taken the federal government up on this offer. Public Law 280 is considered to be a colossal failure: its adoption has led to an increase in crime and a reduced level of economic development.[37] Wisconsin is one of the six mandatory Public Law 280 States.

It is Public Law 280 which gives the State of Wisconsin criminal jurisdiction over Mr. House. Congress exceeded its

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[32] Vanessa J. Jimenez & Soo C. Song, *Concurrent Tribal and State Jurisdiction Under Public Law 280*, 47 AM. U. L. REV. (1998).

[33] The Curtis act of 1898 made all tribal laws unenforceable and abolished all tribal courts in Indian Territory.

[34] Carole E. Goldberg, *Public Law 280: The Limits of State Jurisdiction over Reservation Indians*, 22 UCLA L. REV. 535, 542, (1975).

[35] 18 U.S.C. §1162

[36] 25 U.S.C. §1321

[37] Valentine Dimitrova-Grajzl, Peter Grajzyl, & A. Joseph Guse, *Jurisdiction, Crime, and Development: The Impact of Public Law 280 in Indian Country*, 48 LAW & Soc'y REV. 127,155 (2014).

constitutional authority when it passed Public Law 280. Public Law 280 is unconstitutional. Without jurisdiction of Mr. House, the State cannot prosecute or convict him in this case. As such, Mr. House's conviction must be vacated, and must be released from custody.

I. Standard of Review

Mr. House is challenging the constitutional validity of a statute. The constitutionality of a statute presents a question of law which is reviewed *de novo*.[38] Mr. House does not contend Public Law 280 is necessarily unconstitutional to all of the Native American Nation's but as applied to to the sovereign Oneida Nation, 25 U.S.C. §71 is unconstitutional, and as such, Public Law 280 must also be unconstitutional.

II. The Oneida are a Sovereign Nation

A. What is Sovereignty?

Sovereignty is "a term used in many senses and is much abused".[39] In the general sense, sovereignty is the exercise of dominion or power. The Third Restatement of Foreign Relations notes sovereignty "implies a state's lawful control over its territory generally to the exclusion of other states, authority to govern in that territory, and authority to apply law there".[40] These attributes of sovereignty are found throughout our

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[38] *State v. Herrmann*, 2015 WI App 97 ¶6, 366 Wis. 2d 312, 873 N.W.2d 257 (2015).

[39] *Boumediene v. Bush*, 553 U.S. 723, 754, 128 S.Ct. 2229, 171 L. Ed. 2d 41 (2008).

[40] 1 Restatment (Third) of Foreign Relations Law of the United States §206, Comment b.

caselaw.[41] The most fundamental aspect of sovereignty is the ability to self-govern.

B. The Power to Recognize and Treat with Sovereign Nations Lies in the Executive Branch

In our Constitutional framework, the question of whether a nation is a sovereign is a political question.[42] The Constitution delegates the powers of foreign affairs to both the legislative and executive branches. Congress is granted the authority to regulate commerce with other nations, as well as the authority to declare war.[43] The Executive Branch is granted the military authority of the Commander in Chief, as well as the diplomatic authority to make treaties, and appoint ambassadors.[44] It is the Executive Branch which is charged with determining the sovereignty of other nations.[45]

C. The Oneida Have Retained Their Sovereignty and The Executive Branch has Acknowledged this Sovereignty

When the United States was formed, the Oneida were considered a sovereign nation. They self-governed, enacting laws, and applied those laws to the members of the Oneida Nation. They engaged in treaties with other nations, including the United States. These treaties confirm their sovereign status was never lost by treaty. In the treaty of Fort Stanwix, the two nations agreed to exchange hostages, and settled the boundaries

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[41] *See*, *e.g. Puerto Rico v. Sanchez Valle*, 136 S.Ct. 1836, 1870, 195 L.Ed. 2d 179 (2016)

[42] *Boumediene v. Bush*, 553 U.S. 723, 753, 128 S.Ct. 2229, 171 L. Ed. 2d 41 (2008).

[43] U.S. Const. Art. 1 §8 CL. 3, 11

[44]U.S. Const Art. 2 §2

[45] *Williams v. Suffold Ins. Co.*, 38 U.S. 415, 420, 10 L. Ed. 226 (1839); *Jones v. United States*, 137 U.S. 202, 213-215, 11 S.Ct. 80, 84 L.Ed 691 (1890).

of the Six Nations. The Treaty of Fort Harmar confirms these land boundaries, and adds an additional provision: if a robbery or murder is committed, or horses are stolen, the accused is to be turned over to the United States for prosecution according to the law of the state or territory where the offense was committed.

In 1794, George Washington entered into the treaty of Canandaigua with the Oneida and the rest of the Six Nations. The treaty established peace and perpetual friendship between the United States and the Hadenosaunee Nations, land boundaries, and the right of the United States to make a road through a portion of the Native American's territories. Notably, Article VII includes provisions for each nation to bring grievances against each other. The Six Nations were empowered to bring their grievances to the President of the United States, and the United States were permitted to submit their grievances to the principle chiefs. This agreement was entered into to preserve the peace and friendship of the two nations.

That same year, the United States engaged in a separate treaty with the Oneida to compensate them for the losses the Oneida suffered when allied with the Untied States against the British crown. The United State's final treaty with the Oneida is a simple treaty where the United States bought most of the Oneida's land. Absent from these treaties is any delegation of the Oneida's sovereign status. The Oneida have not lost their sovereign status in a treaty.

The Oneida nation persists. While their territorial lands have shifted and been diminished, they still maintain their land as set out in the 1838 Treaty. The Oneida maintain a system of self-government, and have their own Constitution, by-laws, and statutes. Their Constitution "serves as an affirmation of the

Oneida's sovereign status".[46] While there are references to the United States, and United States laws in the Oneida's constitution, the law cited to confirms the Oneida are a self-governing people.[47] The Oneida Nation maintains that which our caselaw identifies as the fundamental aspects of sovereignty: the ability to self-govern within the nations boundaries.

The Executive Branch of the United States government recognizes the Oneida Nation as a sovereign nation. This political question was last addressed by the executive branch in 1838. Until the executive branch explicitly no longer recognizes the Oneida as a sovereign nation, there is no reason to doubt the Oneida's sovereignty.[48]

III. Congress Does Not Have Plenary Power over The Oneida Nation

A. The Federal Government is One of Defined and Limited Powers, The Constitution Does Not Grant Plenary Power over Native American Nations to Congress

Our federal government is one of *defined* and *limited* powers.[49] When an act of Congress exceeds these boundaries, it is "repugnant to the constitution" and void.[50] When *Kagama* stated Congress had plenary power over all Native American Nations, it cited no source from the constitution, and created this new congressional power from thin air. *Kagama* defended its

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[46] CONSTITUTION AND BY-LAWS OF THE ONEIDA NATION, Oneida-nsn.gov (2021), https://oneida-nsn.gov/wp-content/uploads/2018/05/2015-06-16-Tribal-Constitution.pdf (last visited Nov 1, 2021).

[47] ([T]he *governing bodies* of the Oneida Tribe…shall…prepare membership rolls".)(Emphasis added) 81 Stat. 229

[48] *See, e.g. McGirt v. Oklahoma*, 140 S.Ct. 2452, 207 L.Ed. 2d 985 (2020).

[49] *Marbury v. Madison*, 5 U.S. 137, 176 (1803)

[50] *Marbury*, at 180(Emphasis added).

reasoning by claiming the government must protect the Native American Nations as wards of the State; if these proud nations were "weak and diminished" it is only because of the wrongs committed upon them by the States and the Union. *Dred Scott* was similarly decided: because Mr. Scott ancestors had been the victims of the international slave trade, and were bought and sold as property in America with the sanction of the United States government, Mr. Scott could not be an American citizen.[51] *Kagama* was and is wrong; at least one notable jurist and several scholars have noted this significant absence of constitutional authority for this congressional power.[52]

1. Plenary Power over the Native American Nations is Not Included in the Text of The Constitution

The Constitution of the United States is almost silent in regards to the relations of this nation to the numerous Native American Nations in North America. Article I §8 cl. 3 authorizes Congress to regulate commerce with the Indian Tribes, just as it does for other foreign nations. The only other mention of Native Americans in the Constitution comes in the Apportionment Clause, noting "Indians not taxed" are to be excluded when apportioning representatives. The plain text of the document does not include any other mention of Native Americans; there is certainly no grant of absolute power to regulate the internal affairs of these sovereign nations.

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[51] *Scott v. Sandford*, 60 U.S. 393, 403, 15 L. Ed. 691

[52] *See United States v. Lara*, 541 U.S. 193, 215, 219, 124 S. Ct. 1628, 158 L. Ed. 2d 420 (2004)(Thomas, J., Concurring); *United States v. Bryant*, 136 S. Ct. 1954, 1968, 195 L.Ed. 317, 579 U.S. 140 (2016)(Thomas, J., Concurring); Mark Savage, *Native Americans and the Constitution: The Original Understanding*, 16 AM. INDIAN L. REV. 57 (1991); Saikrishna Prakash, *Against Tribal Fungibility,* 89 Cornell L. Rev. 1069 (2004).

2. History Surrounding the Adoption of the Constitution Supports the Argument Congress Lacks Plenary Power Over the Oneida Nation

When analyzing a constitutional challenge, the text of the Constitution is necessarily controlling. To confirm the analysis or to clarify ambiguities, historical sources may be consulted to better understand how those who drafted the constitution and how the voters who ratified the constitution originally understood its meaning.[53] The historical sources confirm the Oneida were a sovereign nation and the federal government lacks plenary power over them

a) James Madison's Proposal to Include Plenary Power over the Native American Nation's was Rejected

The Constitutional Convention was presented with proposal by James Madison. This proposed addition to the Constitution would have given Congress the power "[t]o regulate affairs with the Indians as well within as without the limits of the U. States".[54] This proposal was rejected. Our framer's considered the idea of attempting to give plenary power over the Naive American Nations to Congress, rejected the idea, and simply gave Congress the power to regulate commerce with the Nations, like all other nations. This is strong support for the argument Congress does not have plenary power over the Native American Nations.

b) The United States Continued to Engage in Treaties with the Oneida Nation

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[53] *District of Columbia v. Heller*, 554 U.S. 570, 576, 605 (2008)(Internal citations omitted)

[54] Mark Savage, *Native Americans and the Constitution: The Original Understanding*, 16 AM. INDIAN L. REV. 57, 73 (1991)(Internal citations omitted).

After the ratification of the Constitution in 1788, the United States continued to engage in treaties with the Oneida Nation. (Treaty of Fort Hamar, 1789; Treaty of Canandaigua, 1794; Treaty with the Oneida, 1794; Treaty with the Oneida, 1838). If Congress had plenary power over the Oneida, it would have been much simpler to take the lands they held through legislation, rather than negotiating treaties. These treaties are evidence Congress did not have plenary power over the Oneida, and it fell to the executive branch to engage in treaties with this sovereign nation.

c) Supreme Court Decisions are Conclusive: the Native American Nation's were Considered to be Sovereign Nations

The great Chief Justice John Marshall, who was an influential member of the Virginia Ratifying Convention, has explained why there is little mention of the Native American Nations in the Constitution:

> The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed: and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term "nation: so generally applied to the means, "a people distinct from others." The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently *admits their rank among those powers who are capable of making treaties*. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves,

> having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense….These articles are associated with others, recognizing their title to self government. The very fact of repeated treaties with them recognizes it; and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence - - its right to self government, by associating with a stronger and taking its protection.[55]

This is a definitive interpretation of an unanimous Supreme Court. At the time the Constitution was ratified, the Native Nations were considered just that, sovereign nations.

B. There Are Other Sources of Authority Which Could Grant Congress Criminal Jurisdiction Over the Oneida Nation But Do Not Do So

1. The Indian Commerce Clause Does Not Grant Criminal Jurisdiction Over The Sovereign Oneida Nation

The Constitution gives congress the ability to regulate commerce with the Native American Nations. Could this grant of authority form the basis to obtain criminal jurisdiction over the Oneida Nation? The answer is clearly no.

In *United States v. Morrison*, the Supreme Court held the Commerce Clause does not grant Congress with the authority to regulate noneconomic, violent conduct based solely on the conducts aggregate effect on interstate commerce.[56] Using the Commerce Clause to justify plenary power becomes even more absurd when evaluated as to the clause's third subject: foreign nations. No party could reasonably suggest because Congress has the ability to regulate commerce with, say Canada, that

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[55] *Worcester v. Georgia*, 31 U.S. 515, 559-561 (1832)

[56] *United States v. Morrison*, 529 U.S. 598, 619 (2000)

Congress may then assume criminal jurisdiction over Canadians for a bodily crime against another Canadian on Canadian soil. The Commerce Clause cannot be reasonably read in a manner in which it enables the United States to become the law enforcement agency of the world.

2. The Treaties With the Oneida Nation do not Abridge the Oneida's Sovereignty

As addressed above, the treaties between the United States and the Oneida do not grant the United States legislative power over the Oneida.

3. Treaties with the Oneida Grant Limited Criminal Jurisdiction to the State Government, but this Limited Grant Does not Apply to Mr. House

The 1789 Treaty of Fort Harmar grants limited criminal jurisdiction over members of the Oneida. If a member of the Oneida were to rob, murder, or steal the horses of an American citizen, the United States would be authorized to have that individual prosecuted by the state government. Mr. House is not accused of robbery, murder, or horse theft. This grant of criminal jurisdiction does not apply to him.

IV. Public Law 280 Exceeds Congress's Constitutional Authority. Mr. House's Conviction must be set aside.

Congress does not have the authority to regulate criminal jurisdiction in sovereign nations, particularly the Oneida Nation. Congress cannot delegate an authority it does not have. Public Law 280 exceeds the Constitutional powers granted to Congress. There are no other sources of authority which would support Public Law 280. Without Public Law 280, the State of Wisconsin has no criminal jurisdiction over the members of the Oneida Nation for an act allegedly done to another member of the Oneida Nation, while within the boundaries of the Oneida Nation. Mr.

House's conviction must be vacated, and he must be released from incarceration.

Conclusion

For the foregoing reasons, Mr. House respectfully requests his conviction be vacated, and he be released from custody.

Dated: Monday, November 1, 2021
Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (8)
I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is 4,705 words.
Electronically Signed By: Steven Roy

CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (2)
I hereby certify that filed with this brief is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.
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