

16-1498 WASHINGTON DEPT. OF LICENSING V. COUGAR DEN, INC.

DECISION BELOW: 392 P.3d 1014

LOWER COURT CASE NUMBER: 92289-6

QUESTION PRESENTED:

An 1855 treaty between the United States and the Yakama Indian Nation provides members of the tribe "the right, in common with citizens of the United States, to travel upon all public highways." In a series of cases, the Ninth Circuit has rejected claims that this language exempts the Yakama from taxes or state fees on off-reservation commercial activities, holding instead that the language is limited to securing for tribal members a right to travel on public highways without paying a fee for that use or obtaining state approval. In this case, however, the Washington Supreme Court interpreted the treaty far more broadly, holding that it implicitly prohibits states from taxing "any trade, traveling, and importation" by the Yakama, even off-reservation, "that requires the use of public roads." The court therefore held that the treaty preempts Washington from imposing wholesale fuel taxes on Respondent Cougar Den, a Yakama-owned fuel distributor that imports millions of gallons of fuel into Washington annually for sale to the general public.

The question presented is:

Whether the Yakama Treaty of 1855 creates a right for tribal members to avoid state taxes on off-reservation commercial activities that make use of public highways.

CERT. GRANTED 6/25/2018