United Cherokee Republic of North America

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Treaties of 1620, 1621, 1730, 1785, Treaty of Holston of 1791; Treaty of 1816 (7 Stat. 138); Treaty of Hopewell of 1835 (7 Stat. 478), Supreme Law of the Land, Art. VI, sec.2 US Constitution
All matters are held within the parameters of Cherokee Tribal Law

UNITED CHEROKEE REPUBLIC OF NORTH AMERICA©

DECLARATION, ADVISORY, AND NOTIFICATION OF INHERENT TRIBAL SOVEREIGNTY
By Daei Grandor
Judicial Advocate General JAG, Senior Judge
for Wampanoag Nation and United Cherokee Republic

THE WAMPANOAG INDIAN FEDERATION OF THE ALGONQUIN NATIONS

I, Daei Grandor, of Indian Blood, elected as Judicial Advocate General (Senior Judge), of the Wampanoag Nation(s), United Cherokee Republic, also known as DAEI GRANDOR, do make the following presentment of determination, to Wit:

This brief is to present established facts on the basic principles of Indian tribal sovereignty and Indian law as they relate to the issue of political relationship between Indian tribes, Indians, and the U.S. Federal Government.

Legal Principles Behind Indian Tribal Sovereignty

The fundamental principle of Indian tribal sovereignty is that Indian tribes pre-existed the federal Union and the U.S. Constitution, and therefore draw their power and authorities as a distinct political community from their original status as sovereigns prior to European arrival and contact. Indian tribal sovereignty is endowed with inherence as a God-given birthright, and includes all the powers of a sovereign that have not been divested by Congress or by the tribes' incorporation into the federal Union under the aegis of international law.

Rather, tribal recognition is a process by which the Federal Government acknowledges that Indian entities obtain, maintain and retain their inherent sovereign status since time immemorial as the original landowners. The basis for this recognition comes from the writings of St. Augustine's *City of God* of 426 AD, the Magna Charta of 1215, the *Summa Theologica* of St. Thomas Aquinas, Franciscus de Victoria's *De Indis et Iure Belli Relectiones* 127-128 (Ernest Nys ed., J. Bate trans., Carnegie Institution 1917 (orig. ed. 1557), Pope Paul III's *Subimus Deus* of 1537, treaties with England and the Cherokees of 1760, the Royal Proclamation of 1763, the Northwest Ordinance of 1787, the U.S. Constitution of 1789 (Indian Commerce Clause, Art. 1, sec. 8, cl. 3), various treaties with the Cherokees, executive orders, federal court decisions and administrative regulations.

Indian tribal Sovereignty, like sovereignty in general, has two main components -- an **external** one and an **internal** one. The external component of Indian tribal sovereignty relates to the ability of the sovereign entity to engage in relations '**as a government**' with other nation-states. Indeed, the U.S. Constitution contemplates that Indian tribes will engage in **government-to-government** relations with the United States as evidenced through the Treaties.

Internal Components of Tribal Sovereignty

The internal component of tribal sovereignty relates to the tribes' powers in relation to their members and territory. As a matter of federal law, Indian tribes have been deemed "unique aggregations possessing attributes of sovereignty over both their members and their territory." The sovereign powers of tribes, in conformity the Montevideo Convention of 1933 which defines what constitutes an independent sovereign nation-state include:

(1) the power to determine their own form of government,

(2) define the conditions of membership in the tribe,

(3) regulate domestic relations among its members,

(4) prescribe rules of inheritance,

(5) levy taxes on members and persons doing business with members or on tribal lands,

(6) control entry onto tribal lands,

(7) regulate the use and distribution of tribal property, and

(8) administer justice among members of the tribe, this latter power including the right to prescribe laws applicable to Indians within their jurisdiction and enforce those laws by criminal sanctions.

The governmental, political character of Indian tribes has been found by the Supreme Court to provide the constitutional foundation for the many statutes which provide benefits to Indians.

Of course, a tribe may choose not to exercise any of these powers. An element of sovereignty is the ability to make choices about what powers to exercise. Tribes retain the sovereign prerogative to not exercise any of the powers I have described above without ceding their right to exercise them in the future.

The Federal Acknowledgment Process

The Wamapnoags' evidence of it's sovereignty over the USA, the states, commonwealths and republics and the corporate US Federal Government. **It starts from the Treaty signed by Masasoit, chief of all Wampanoag Tribes, concluded between King James of England in 1620 AD**. This Wampanoag Peace Treaty was further established by the Pilgrims arrival in Plymouth, MA in 1621 AD. This Treaty supports the view that it was a preemptive action prior to the formation of the United States of America when the original 13 Colonies existed enjoyed suzerainty over continental America with Spanish, Dutch, English and French collaboration.

As stated below, HISTORY OF THE TOWN OF PLYMOUTH FROM THE FIRST SETTLEMENT IN 1620, TO THE PRESENT TIME: WITH A CONCISE HISTORY OF THE ABORIGINES OF NEW ENGLAND, AND THEIR WARS WITH THE ENGLISH.

By THE WAMPANOAG INDIAN FEDERATION OF THE ALGONQUIN NATION, Indian neighbors of the Pilgrims, the terms of the treaty, in Old English:

1. *That neither he nor any of his should injure or do hurt to any of our people.*
2. *And if any of his do hurt to any of ours, he should send the offender, that we might punish him.*
3. *That if any of our tools were taken away when our people were at work, he should cause them to be restored, and if ours did any harm to any of his, we would do the like to him.*
4. *If any did unjustly war against him, we would aid him; if any did war against us, he should aid us.*
5. *He should send to his neighbor Confederates, to certify them of this, that they might not wrong us, but might be likewise comprised in the condition of peace.*
6. *And when their men came to us, they should leave their bows and arrows behind them, as we should do our Peaces when we came to them, and lastly that doing thus, King James would esteem of him friend and allie.*

In compliance with the terms of this first treaty made on New England soil, Massasoit (Wampanoag Chief) kept his word for forty years till he died in 1661.

In the understanding and eyes of the Wampanoag Nation, nothing has changed since this first treaty of peace and the treaty and principles extend and remain valid to today.

Treaty Making with the Federal Government

Inherent in the Treaty-making and Commerce Clause powers is the authority of the Federal Government to determine with which entities these **government-to-government** relations will exist. Federal courts and Tribal courts have recognized that political branches of the Federal Government have authority to make these determinations.

On our part, we have used the International Law method of using the Apostille in both individual Identities (Hague Convention October 5, 1961) and the corporate unified identity (Hague Convention January 1, 1985).

For the Federal governments' part, Congress has the authority to determine appropriate subjects of the Indian Commerce Clause and Treaty-making powers. Courts give Congress broad **deference** in making these determinations, subject only to the requirement that they apply to "distinctly Indian community[ies]."

It is worth noting that the Supreme Court has expressly stated its ability to determine whether Congress has over-stepped its limits and authority, and thus the Court has made some powerful rock-solid findings and conclusions of law:

"The standard principles of statutory interpretation do not their usual force in cases involving Indian law." Montana v. Blackfeet Tribe, 471 U.S. 759, 766 (1985). "*The basic Indian law canons of construction require that treaties, agreements, statutes, and executive orders be liberally construed in favor of the Indians.* Choctaw Nation v. United States, 318 U.S. 423, 431-432 (1943)(quoting Tulee v. Washington, 315 U.S. 681, 684-685 (1942)("treaties are construed more liberally than private agreements . . .Especially is this true in interpreting treaties and agreements with the

Indians [which are to be construed] 'in a spirit which generously recognizes the full obligation of this nation to the protect the interests of the Indians."

"In the government's dealings with the Indians the construction of treaties is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of the Indians," Worcester v, Georgia, 31 U.S. 515, 551-557 (1832) (interpreting Treaty of Hopewell with the Cherokees in light of congressional policy to "treat tribes as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate").

"All ambiguities in treaty provisions are to be resolved in favor of Indians." McClanahan v. Ariz. State Tax Comm'n, 411 U.S. 164, 174 (1973)("any doubtful expressions in treaties should be resolved in the Indians' favor");

Choctaw Nation v. Oklahoma, 397 U.S. 620, 631 (1970); Carpenter v. Shaw, 280 U.S. 363, 367 (1930)("doubtful expressions should be resolved in favor of the Indians"); Winters v. United States, 207 U.S. 564, 576-77 (1908)("by a rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians").

Tribal property rights and sovereignty are preserved unless Congress's intent to the contrary is clear and unambiguous. United States v. Dion, 476 U.S. 734, 739-40 (1986)("what is essential is clear evidence that Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty");

White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980)("ambiguities in federal law have been construed generously in order to comport with . . . traditional notions of tribal sovereignty and with the federal policy of encouraging tribal independence");

Santa Clara Pueblo v. Martinez, 436 U.S. 49, 59-60 (1978)(federal statutes will not be interpreted to "interfere with tribal autonomy and self-government . . . in the absence of clear indications of legislative intent");

Fisher v. District Court, 424 U.S. 382, 387-388 (1976) (tribes have right to regulate tribal affairs free from state interference in absence of express federal legislation to the contrary);

Menominee Tribe of Indians v. United States, 391 U.S. 404, 412 (1968)(quoting Pigeon River Co. v. Cox, 291 U.S. 138, 160 (1934) ("the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress");

United States ex rel. Hualpai Indians v. Santa Fe Pac. R.R., 314 U.S. 339, 346, 353 (1941) (congressional intent to abrogate aboriginal property rights must be "plain and unambiguous" or "clear and plain");

NLRB v. Pueblo of San Juan, 276 F.3d 1186, 1195-96 (10th Cir. 2002)("we . . . not lightly construe federal laws as working a divestment of tribal sovereignty and will do so only where Congress has made its intent clear that we do so").

Canons of construction were first developed in the context of treaty interpretation, but the courts have consistently extended them to non-treaty sources of positive law such as *agreements* (Winters v. United States, 207 U.S. 564 (1908)); *statutes* (County of Yakima v. Confederated Tribes & bands of the Yakima Indian Nation, 502 U.S. 251, 269 (1992))("when we are faced with these two possible constructions of a statute, our choice between them must be dictated by a principle deeply rooted in

this Court's Indian jurisprudence:'[S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit")(quoting Montana v. Blackfeet Tribe, 471 U.S. 759, 767-68 (1985); see also McClanahan v. Ariz. State Tax Comm'n, 411 U.S. 164, 174 (1973); *executive orders* (Antoine v. Washington, 420 U.S. 194 (1975); (Arizona v. California, 373 U.S. 546 (1963); and *federal regulations* (HRI Inc., v. EPA, 198 F.3d 1224, 1245 (10th Cir. 2000).

These canons of construction remain vital and effective. Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172 (1999).

The Supreme Court declared that in interpreting treaties, "we look beyond the written words to the larger context that frames the Treaty," including the "history of the treaty, the negotiations, and the practical construction adopted by the parties particularly as the Indians would have understood them" Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172 (1999) quoting Choctaw Nation v. Oklahoma, 397 U.S. 620, 631 (1970).

As with congressional power to recognize tribes, the Supreme Court has stated that the Executive's power to determine tribal status is **entitled** to **deference**. The Secretary of the Department of the Interior (the Secretary) has, by regulation, set forth criteria that are aimed at identifying groups that are sovereign tribes. Whether or not there is Federal recognition of a tribe does, in itself have any effect upon it's already established Sovereignty. The Sovereignty is by their Declaration and not by the governments' recognition. Treaties are the sine qua non of federal recognition despite the enactment of the Federally Recognized Indian Tribes List Act, Public Law 103-454, 108 Stat. 4791.

Federal Regulatory Criteria

The regulatory criteria include factors which determine whether an entity is in fact, sovereign.

The ***Marshall Trilogy*** (Johnson v. McIntosh of 1823, Cherokee Nation v. Georgia of 1831, and Worcester v. Georgia of 1832) set the calculus and standard for establishing inherent tribal sovereignty of tribes as distinct political communities who have attained a "domestic dependent ward" status which created a guardianship role for the United States government not contemplated by the Indian Commerce Clause. This was an extra-constitutional finding and declaration by Chief Justice John Marshall which has survived till today with major federal statutory imperatives vacillating between powers recognized and granted to the tribes and the federal government. 25 United States Code has been a contradiction in terms with 18 United States Code concerning Indian tribes and Indians with varying degrees of powers.

While the Executive power to determine tribal status is presumably subject to at least the same limits that the Constitution would impose on Congress, we are not aware of any court decision overturning a determination by the Secretary of the Interior that a group should be recognized as a tribe. In fact, the three acknowledgment decisions challenged on the merits have been upheld by the courts.

Secretary of Interior

Like other decisions that the Secretary of the Interior makes, the Secretary is bound to apply her own regulations. Her determinations are subject to challenge under the Administrative Procedures Act (APA) with regard to whether a group has properly been denied, or granted, acknowledgment.

A decision may be overturned under the APA if it is "clearly erroneous," "arbitrary or capricious" or "contrary to law." In sum, the criteria set forth for reviewing decisions under the APA, in conjunction with the criteria set forth in the Secretary's regulations, form the primary basis for determining whether an acknowledgment decision is proper. Together, they provide for judicial scrutiny of the

Secretary's acknowledgment decisions. It is not for the Department of Justice to speak to the strength of evidence needed under the regulations. The agency tasked with the acknowledgment process, the Department of the Interior, is in the best position to speak to the evidence needed to fulfill the criteria.

There is nothing in the text of the Indian Reorganization Act of 1934 mandating the approval of the Secretary of the Interior concerning tribal laws and ordinances adopted pursuant to the Act. Kerr-McGee v. Navajo Tribe, 471 U.S. 195, 198 (1985).

Powers granted to the Secretary of the Interior have been frequently abused. Coyote Valley Band of Pomo Indians v. United States, 639 F.Supp. 165 (E.D. Cal. 1986).

In 1998, the Indian Reorganization Act was amended to provide the Secretary of the Interior power to disapprove tribal laws ***only if*** it was found to be contrary to applicable laws.

Federal power . . . is not absolute. While extending to all appropriate measures for protecting and advancing the tribe, it is subject to limitations inhering in such a guardianship and to pertinent constitutional restrictions as mandated in the Indian Commerce Clause, Art. 1, sec. 8, cl. 3. United States v. Creek Nation, 295 U.S. 103, 109-110 (1935)

The decision to recognize a group as an Indian tribe may remain a political question not reviewable by the courts. Miami Nation of Indiana, Inc. v. United States, Dep't of Interior, 255 F.3d 342, 347-348 (7th Cir. 2001) (Possner, J.) One wonders why the 7th Circuit agreed to hear the case in the first place if it was a political question. They could have refused to hear the case with a Minute Order to assign the matter to the Congress.

TAXATION

The US Federal government supports tribal sovereignty and is committed to working with Indian tribes on a **government-to-government** basis. There is no taxation, whatsoever because Indian treaties were concluded before the enactment of the 16th Amendment and the Internal Revenue Code. Courts often struggled to assess whether taxation was contemplated when tribes and the federal government entered into a treaty relationship. Confederated Tribes of Warm Springs Reservation v. Kurtz, 691 F. 2d 878, 882 (9th Cir. 1982) which found and declared that an express tax exemption was required in the treaty), Holt v. Commissioner, 364 F. 2d 38, 40 *8th Cir. 1966)(interpret a tax execution by inference).

Revenue Ruling 94-16 declared tax exemption for tribal corporations pursuant to Section 17 of the Indian Reorganization Act of 1934.

Revenue Ruling 67-284 declared Indian tribal tax exemption. See Mark J. Cowan*, Leaving Money on the Table(s): An Examination of Federal Income Tax Policy Towards Indian Tribes*, 6 Fla. Tax Rev. 345, 355-57 (2004).

Reach of the Wampanoag Nations

Wampanoag Nations also includes many others known today such as Cherokee, Creek, Crow, Lakota, Chippewa, Heron and others. We are attempting a revised, updated and more comprehensive version of the Treaty with the US Government corporations and the real American People to implement this Wampanoag Treaty of Peace, 2010.

RULING

After the finding of facts to be true and accurate. Therefore, it is hereby ordered that the ruling of Law be supported and applied to the recognition of the Tribal sovereignty of The Wampanoag Nation, and be hereby recognized by the Federal government and by all states, commonwealths, and republic.

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Judge, Daei Grandor,
Wampanoag Nation, Cherokee Republic, date