

Yakama gas tax case at Supreme Court

Leaders of the Yakama Nation are asking for Indian Country's support, as the U.S. Supreme Court weighs its first tribal case of the current term.

Oral arguments in *Washington State Department of Licensing v. Cougar Den* happened last week, with the Justices appearing to be divided on the question.

The outcome will determine whether the 1855 Yakama Treaty—which specifically guarantees “free access” to public highways—protects tribal citizens from the state of Washington’s fuel tax.

“This should be a concern to all treaty tribes,” said David Washines, the chairman of the Yakama Nation General Council.

The tribe is not a party to the litigation, and won't be able to defend the treaty before the justices. That task is instead left to Adam G. Unikowsky, a Washington, D.C., attorney who has won all seven cases he has argued at the Supreme Court, according to his law firm.

Despite that winning record, Indian Country is up against a formidable foe. Instead of asserting a trust and treaty responsibility to the Cougar Den, a fuel company on the Yakama Nation that is being subjected to the tax, the federal government is siding with the state of Washington.

According to a summary of last week's proceeding, provided by the Native

American Rights Fund: “Justices Kagan, Sotomayor and Gorsuch dominated the questioning of the Washington State Department of Licensing attorney Noah Purcell, with Justice Kavanaugh asking a few questions as well.

“These justices kept returning to the theme of the tribes’ bargained-for right to transport goods to market on highways off-reservation. For example, when the department asserted that it could impose the tax at issue because it is non-discriminatory, Justice Kagan questioned why that mattered:

“It does seem to me that from the Yakama’s point of view, and they’re, after all, the people who entered into

the treaty... this tax is burdening exactly what they bargained to get, which is the ability to transport their goods without any burdens, without a tax.”

“Justice Kavanaugh similarly questioned whether the state’s non-discriminatory imposition of the tax mattered by emphasizing the tribes’ bargain:

“But... the effect was that, in taking your goods to market, which was the promise, in exchange for a huge area of land, an area of land the size of the State of Maryland that was given up by the tribe, that you could take your goods to market. And this burdens, as Justice Kagan said, this burdens substantially their ability to take goods to market.”



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