

SUPREME COURT OF THE STATE OF WASHINGTON

Cougar Den, Inc. v. Dep't of Licensing

Cougar Den · No. 92289-6 · Decided March 16, 2017

SUMMARY

The Washington Supreme Court held that the Yakama Nation Treaty of 1855 protects the Yakamas' right to travel on public highways for trade and commerce. The court concluded that Washington's fuel-importation taxes, licensing requirements, and related penalties impermissibly burdened Cougar Den's treaty-protected transportation of fuel to the Yakama Indian Reservation. The court affirmed the superior court's reversal of the Department of Licensing's assessment; Chief Justice Fairhurst dissented.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	Johnson, J.
JURISDICTION	Washington
DECIDED	March 16, 2017
DOCKET	92289-6
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Department of Licensing appealed a Yakima County Superior Court decision reversing the Department director's order and holding that Washington's fuel taxes, licensing requirements, and penalties were preempted by the Yakama Treaty of 1855. The Washington Supreme Court granted direct review.
STANDARD OF REVIEW	Under the Washington Administrative Procedure Act, the court reviews whether the agency erroneously interpreted or applied the law. Agency decisions are generally presumed correct, but treaty interpretation is a legal question reviewed de novo. The Supreme Court reviews the agency record directly and sits in the same position as the superior court.
PRECEDENTIAL VALUE	Published, en banc Washington Supreme Court opinion
PARTIES	Washington State Department of Licensing v. Cougar Den, Inc.

TOPICS

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QUESTIONS PRESENTED

1. Whether the Yakama Treaty of 1855's right-to-travel provision protects the transportation of fuel into Washington for commercial purposes.
2. Whether Washington's fuel taxes, importer-license requirements, and related penalties are preempted by the Yakama Treaty when they burden the transportation of fuel over public highways.
3. Whether the Department director's order should be reversed under the Washington Administrative Procedure Act.

HOLDINGS

1. The Yakama Treaty of 1855 protects the Yakamas' historical practice of using public roads to engage in trade and commerce, including transporting goods to market.
2. Washington's fuel-importation tax, importer-license requirement, and related penalties are preempted as applied to Cougar Den because they impose a condition on the Yakamas' treaty-protected transportation of goods over public highways.
3. The fuel-tax and licensing requirements do not fall within the regulatory exception because their stated purpose is tax collection rather than a purely regulatory purpose.

KEY QUOTATIONS

“We hold that the right to travel provision in the treaty protects the Tribe's historical practice of using the roads to engage in trade and commerce.” (13)

“As determined by the federal courts, any trade, traveling, and importation that requires the use of public roads fall within the scope of the right to travel provision of the treaty.” (16)

“The United States Supreme Court has established a rule of treaty interpretation: Indian treaties must be interpreted as the Indians would have understood them.” (5)

FACTUAL BACKGROUND

Cougar Den, a corporation of the Yakama Nation, transported fuel from Oregon to the Yakama Indian Reservation in Washington, where the fuel was sold. During 2013, Cougar Den used a trucking company to haul the fuel into Washington. The Department assessed approximately \$3.6 million in taxes, penalties, and licensing fees based on the fuel importation. Cougar Den argued that the Yakama Treaty of 1855 secured a right to travel on public highways and therefore preempted the State's fuel taxes and licensing requirements.

PROCEDURAL HISTORY

The Department assessed Cougar Den approximately \$3.6 million in unpaid fuel taxes, penalties, and licensing fees for transporting fuel from Oregon into Washington. An administrative law judge ruled for Cougar Den, but the Department director reversed. The Yakima County Superior Court, sitting in an appellate capacity, reversed the director and ruled that the assessment violated the Yakamas' treaty right to travel. The Washington Supreme Court granted direct review and affirmed the superior court.

DISPOSITION

affirmed

CASES CITED

- King County Pub. Hosp. Dist. No. 2 v. Dep't of Health, 178 Wash. 2d 363, 372, 309 P.3d 416 (2013)
- Providence Hosp. of Everett v. Dep't of Soc. & Health Servs., 112 Wash. 2d 353, 355, 770 P.2d 1040 (1989)
- Chi. Title Ins. Co. v. Office of Ins. Comm'r, 178 Wash. 2d 120, 133, 309 P.3d 372 (2013)
- Hunter v. Univ. of Wash., 101 Wn. App. 283, 292, 2 P.3d 1022 (2000)
- Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148, 93 S. Ct. 1267, 36 L. Ed. 2d 114 (1973)
- Choctaw Nation v. Oklahoma, 397 U.S. 620, 630-31, 90 S. Ct. 1328, 25 L. Ed. 2d 615 (1970)
- Tulee v. Washington, 315 U.S. 681, 684-85, 62 S. Ct. 862, 86 L. Ed. 1115 (1942)
- United States v. Smiskin, 487 F.3d 1260, 1264-71 (9th Cir. 2007)
- Cree v. Flores, 157 F.3d 762, 769, 772, 774 (9th Cir. 1998)
- Yakama Indian Nation v. Flores, 955 F. Supp. 1229, 1234-53 (E.D. Wash. 1997)
- Cree v. Waterbury, 873 F. Supp. 404 (E.D. Wash. 1994)
- Cree v. Waterbury, 78 F.3d 1400, 1403, 1405 (9th Cir. 1996)
- King Mountain Tobacco Co. v. McKenna, 768 F.3d 989, 997-98 (9th Cir. 2014)

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