

## SCOTUS Opinion: Fractured Court Upholds 1855 Indian Treaty Against State Gasoline Tax

19 Mar 2019

A company owned by the Yakama Nation Indian tribe transported gasoline from Oregon to the tribe's land in the State of Washington, using the public highways. Washington sought to tax those imports. The Yakama Nation objected, citing to an 1855 treaty with the federal government granting the Nation the right to use the public highways. The Washington state courts held that the tax was preempted by the treaty, and a bare majority of Court, in [Washington State Dept. of Licensing v. Cougar Den, Inc.](#), affirmed. Justice Breyer, joined by two justices, held that the tax had been properly construed by the state supreme court as a tax on the transportation of fuel, not the mere possession of fuel, and since the Nation's understanding of the 1855 treaty was that they were permitted to use the public roads without any tax or obstruction, the tax was preempted. Justice Gorsuch, joined by Justice Ginsburg, ruled on seemingly narrower grounds, holding that the Nation's understanding of the treaty was sufficient in itself to preempt the tax, and focusing more on the long history between the Nation and the federal government, in which the Nation was forced to cede "millions of acres" for "a handful of modest promises" that the Court was obligated to uphold. Chief Justice Roberts, joined by Justices Thomas, Alito, and Kavanaugh, dissented, arguing that the 1855 treaty permitted freedom of travel, but not freedom to carry goods free of tax or regulation. Justice Kavanaugh, joined by Justice Thomas, also filed a dissent, arguing that the treaty's language permitted the Nation to travel on the public roads subject to the same regulations and taxes as American citizens, just like with drunk driving laws, and so the tax was applicable.

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