

No. \_\_\_\_\_ 08-23 JUL 1-2008

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In the **OFFICE OF THE CLERK**  
**William K. Burtz, Clerk**  
**Supreme Court of the United States**

PAUL M. MATHESON,  
*Petitioner,*

v.

CHRISTINE GREGOIRE, Governor of the State of  
Washington; CINDI YATES, Director, GARY  
O'NEIL, Assistant Director, Washington State  
Department of Revenue; THE WASHINGTON  
STATE DEPARTMENT OF REVENUE; M. CARTER  
MITCHELL, Tobacco Tax Control Enforcement  
Program Manager, Washington State Liquor Control  
Board; THE WASHINGTON STATE LIQUOR  
CONTROL BOARD; THE STATE OF  
WASHINGTON; and CHAD R. WRIGHT, Cigarette  
Compact Department Administrator, Puyallup Tribe  
of Indians; and THE PUYALLUP TRIBE OF  
INDIANS, a Federally Recognized Indian Tribe,  
*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE STATE OF WASHINGTON SUPREME COURT

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED FOR REVIEW

The questions presented are:

Whether the State of Washington Cigarette Tax laws are federally preempted and inapplicable to an American Indian motor carrier hauling cigarettes between Indian reservations in Interstate and Indian Commerce.

Whether the laws of the State of Washington can regulate an enrolled tribal Indian shipping goods between a federally recognized Indian Reservation in Idaho to his business on the reservation of his membership located in the State of Washington.

**LIST OF PARTIES TO THE PROCEEDINGS IN  
THE COURT BELOW**

The caption of the case in this Court contains the names of all parties to the proceedings in the Supreme Court. Petitioner is an individual.

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## **PETITION FOR A WRIT OF CERTIORARI**

The case was filed in the State Court of Washington, Thurston County. It was dismissed by the trial court. The case was timely appealed to the Court of Appeals of Washington State. The Opinion, dated July 10, 2007, is reprinted in Appendix A-1 to this Petition. It is officially reported at 161 P.3d 486 (Div II 2007).

The State of Washington Supreme Court denied review on April 2, 2008, 180 P.3d 1292 (2008). The denial is reprinted in Appendix A-17 – A-18.

### **JURISDICTION**

The denial of review of the Washington Supreme Court was entered on April 2, 2008. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257 (a).

The State Court has wrongly decided an important federal question that conflicts with this Court's decision in *Rowe v. New Hampshire Motor Transport Association*, 128 S.Ct. 989, 169 L.Ed.2d 933 (2008). The state statutes regulating Indian transportation are repugnant to the U.S. Constitution and Medicine Creek Treaty.

### **CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES RULES AND REGULATIONS INVOLVED**

United States Constitution Article VI, second paragraph, Art. § 8 cl. 2; Treaty of Medicine Creek, 10 Stat 1132, (Dec. 26, 1854); 49 U.S.C. § 14501 (c)(1); 49 U.S.C. § 13102 (16); Wash.Rev.Code 43.06.455(3), 43.06.455(5)(b), 82.24.250(7)(c); 82.24.290.

## STATEMENT OF THE CASE

Petitioner, Paul Matheson, is an enrolled member of the Puyallup Tribe of Indians, a federally recognized Indian Tribe. Matheson seeks Certiorari to review the decision of the Washington State Supreme Court imposing Washington state cigarette tax statutes on his Indian business located on the Puyallup Indian Reservation.

This court has jurisdiction under the principles of federal preemption mandated by the Interstate Commerce Clause of the United States Constitution, art. §8 cl. 2, Indian Commerce Clause, United States Constitution art §8 cl. 2, and Supremacy clause, United States Constitution, art. VI paragraph 2.

The statutes, Wash. Rev. Code 43.06.455(3); 43.06.455(5)(b), and 82.24.250(7)(c) are federally preempted.

The state court dismissed the action. Therefore, the only record is the Complaint. It is attached as Appendix A-19.

Paul Matheson is a fully enrolled Puyallup Indian who operates a retail business on trust land on the reservation that sells tobacco products, including cigarettes. Complaint, Appendix C, page 7. The Puyallup Tribe and Reservation was created by the Treaty of Medicine Creek, 10 Stat 1132 (Dec. 26, 1854). The Treaty allows the Tribe to control the Reservation.

The State of Washington and the Puyallup Tribe entered into a contract on April 20, 2005. Appendix A-51. It forced Matheson to charge a minimum price on his retail sales of cigarettes. The State of Washington was to receive 30% of all taxes the Tribe collected.



The agreement forced Matheson to maintain minimum prices on his sales. Complaint, Appendix A-27.

If the State cigarette tax was increased, Matheson had to increase his retail prices. In addition, Matheson had to buy only from state certified wholesalers in compliance with state laws. Wash. Rev. Code 43.06.455(5)(b) and (c).

Matheson commenced the case in the State of Washington in the state court, including its employees who implemented the contract, the Puyallup Indian Tribe and its tobacco department administrator. The Complaint requested a declaratory judgment against the Puyallup Tribe and the State of Washington seeking an injunction and declaratory judgment against the State's cigarette tax. Matheson requested a declaratory judgment that the agreement was void. He also sought damages for being forced to abide by the contract alleging that the agreement was a monopolistic conspiracy between the contracting parties.

#### **REASONS FOR GRANTING THE WRIT**

The judgment of dismissal of the State Court upheld State of Washington statutes allowing regulation and taxation of reservation Indians.

The judgment of dismissal of the State Court also upheld the state of Washington's regulation of transportation in Interstate Commerce.

All of the state statutes violate the United States Constitution's exclusive control of Indian and interstate commerce. The state statutes are preempted by the United States Constitution.

The State of Washington enacted Wash. Rev. Code 43.06.455 (3), stating:

(3) A cigarette tax contract with a tribe shall provide for a tribal cigarette tax in lieu of all state cigarette taxes and state and local sales and use taxes on sales of cigarettes in Indian country by Indian retailers. The tribe may allow an exemption for sales to tribal members.

The state also enacted Wash. Rev. Code 82.24.250(7)(a-c) stating:

(a) For purposes of this section, the term person authorized by this chapter to possess unstamped cigarettes” means:

(b) . . . . .

(c) Any person, including an Indian tribal organization, who, after notice has been given to the board as provided in this section, brings or causes to be brought into the state unstamped cigarettes, if within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department.

This Court's decision of *United States v. Lara*, 541 U.S. 193, 200, 124 S.Ct. 1628, 158 L.Ed.2d 420 (2004) held that the plenary power to legislate on Indian matters is reserved to the Congress of the United States. The Constitution of the United States, art. §8, cl. 2, vests Congress with exclusive authority over tribal Indians, especially treaty tribes. *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 455, 115 S.Ct. 2214, 132 L.Ed. 2d 400 (1995).

The Washington Supreme Court did not review this Court's decision in *Rowe v. New Hampshire Transport Association*, 128 S.Ct 989, 169 L.Ed.2d 933 (2008), a case that requires that this Court remand this case. *Rowe* held that carriers of cigarettes going through other states do not have to comply with state laws. This Court held that state laws and regulations requiring different treatment of tobacco carriers are preempted by federal interstate commerce laws. The preemption of Indian Commerce is to preserve national uniformity on Indian issues, an issue that is similar to national union matters. *Chamber of Commerce of the United States v. Brown*, 128 S.Ct. 2408 (2008).

This case applies to all motor vehicles transporting cigarettes. 49 U.S.C. §13102 (16) defines a motor vehicle as any mechanical powered vehicle used on a highway. *Robertson v. Washington State Liquor Control Board*, 10 P.3d 1079, 1088, (Wash. App. Div. 3, 2000), involves Indian cigarette transportation into the state of Washington and held the opposite of *Rowe*. The Washington Court held that the same statute 49 U.S.C. § 14501(c)(1) did not preempt state law as it was "too tenuous, remote or peripheral" *Rowe* held the opposite, 128 S. Ct. at 995.

A New York case on Indian cigarette transportation, *Ward v. New York*, 291 F.Supp.2d 188, 208 (W.D.NY 2003), construed the same statute, 49 U.S.C. § 14501(c)(1), and held the same as *Robertson*.

#### CONCLUSION

This Court's decision in *Rowe* requires a remand to the Supreme Court of the State of Washington.

DATED: July 1, 2008.

Respectfully Submitted,

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