



PRESS RELEASE RE SMITH V. PARKER

Omaha Tribe's Reaction to Supreme Court of United States Grant of Certiorari in *Smith v. Parker*.

On September 30th, the Supreme Court of the United States granted the Plaintiff's Petition for Certiorari. Plaintiffs in the case are Pender, Nebraska bar owners and liquor retailers opposing the Omaha Tribe's exercise of its federal granted regulatory control over liquor sales on the Omaha Reservation. The plaintiffs, along with the State of Nebraska argued that Pender is not located on the Omaha Reservation because, according to their theory, an 1882 Act of Congress opening the land to settlement on part of the Omaha Reservation changed the boundaries and thus diminished the area included within the Reservation.

Previously, the United States Circuit Court of Appeals for the Eighth Circuit decided the appeal of the case of *Smith v. Parker* in favor of the Omaha Tribe of Nebraska. In its opinion, the appeals court quoted established law stating, "there is nothing in this case to overcome the 'presumption in favor of the continued existence' of the Omaha Indian Reservation," and concluded "we affirm for the reasons stated by the district court in its well-reasoned opinion."

In February 2014 Senior United States District Judge Richard Kopf rejected the plaintiffs' theory and concluded that Congress did not diminish the Reservation by the 1882 Act. The Court held that the Act's language, the legislative history surrounding its passage, and the demographic history of the land did not demonstrate clear congressional intent to diminish the Reservation. The plaintiffs and the State of Nebraska appealed.

When the United States Supreme Court grants a petition for certiorari, it means at least four Justices voted to review a lower court's decision. The grant of the petition is simply an action, made without explanation. The Court's rules provide some criteria for reviewing such a decision:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

According to Tribal Chairman, Vernon Miller, the Omaha Tribe is disappointed-not just for the Tribe specifically-but for all of Indian Country in general. "I've noted before this is an attack on all tribal sovereignty using tax dollars; not only of the people of Nebraska but, ironically, of our tribal members as well. Nevertheless, we are confident that the U.S. Supreme Court-like the Courts below- will find that our Reservation has never been diminished. We will continue to go against the current as usual."

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