

STATEMENT OF KATHRN L. TIERNEY
BEFORE THE
COMMITTEE ON OUTDOOR RECREATION AND TOURISM
MICHIGAN STATE SENATE
ON
DECEMBER 9, 2015
IN SUPPORT OF
S.B. 588

I make this statement in support of the passage of S.B. 588 on behalf of my client, the Bay Mills Indian Community. I have represented the Tribe in litigation in both Federal and State courts to obtain recognition of the continued existence of the rights to hunt, fish and gather which the Tribe reserved in its cession treaty with the United States, signed on March 28, 1836.

Those cases include *People v. LeBlanc*, 399 Mich. 31, 248 N.W.2d 199 (1976), and *United States v. Michigan*, which was filed by the United States on behalf of the Bay Mills Indian Community in 1973 in the United States District Court for the Western District of Michigan, and which is now the oldest open case in that Court.

Over time, the emphasis has changed from arguing whether the Tribe's reserved right to harvest continues to exist, and whether the State may apply its hunting and fishing laws to the harvest activities of tribal members, to establishing detailed and complex management systems under which the harvest of all users is regulated in order to protect the fishery and allocate harvest opportunities. The *United States v. Michigan* case provides the framework for these efforts. Comprehensive management and allocation agreements for the 1836 Treaty ceded Great Lakes waters have been reached in 1985 (15-year term) and in 2000 (20-year term). Another comprehensive management and allocation agreement will be negotiated to take effect in 2020.

In 2007, a permanent agreement by Consent Decree was entered by the federal court, which was negotiated by the five 1836 Treaty Tribes, the United States and the State of Michigan. It contains the terms under which members of the five Tribes exercise the 1836 Treaty-reserved rights to hunt, fish, trap and gather on the **lands and inland waters** ceded by the Treaty. The applicable regulations for these activities are enacted by the Tribes.

The cession and Consent Decree cover more than 14 million acres of land and water, in the eastern one-half on the Upper Peninsula, and the northern portion of the Lower Peninsula, south to the Grand River and along that river to western Ionia County, and then along a diagonal line to the mouth of the Thunder Bay River in Alpena. (A map attached to the Consent Decree is attached, which delineates the large area subject to this agreement.) The parties to the Consent Decree contemplated enforcement of the Tribes' regulations by Michigan law enforcement officers, but "only if, and only for so long as, the Parties are able to identify a mechanism by which Tribal law enforcement officers shall have the authority to : stop hunters and fishermen in the field in order to determine whether they are Tribal members.: [Decree ¶24.6]

Enactment of the amendments described in S.B. 588 will not end any and all disputes between the 1836 Treaty Tribes and the State regarding natural resource management issues and the methods required to best protect the environment. Its passage will, however, allow the Tribal and State governments to cooperate and collaborate in efforts to identify, monitor, and arrest those persons whose activities place these natural resources at risk, regardless of their identity. Resource protection and enhancement efforts by all governments will benefit from the recognition and respect that this legislation accords to Tribal and State law enforcement personnel.