

CA-08-02582

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SUPREME COURT  
STATE OF NEW YORK  
APPELLATE DIVISION, FOURTH DEPARTMENT

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CAYUGA INDIAN NATION OF NEW YORK,  
Plaintiff/Appellant,

v.

CAYUGA COUNTY SHERIFF DAVID S. GOULD, SENECA COUNTY SHERIFF JACK S.  
STENBERG, CAYUGA COUNTY DISTRICT ATTORNEY JON E BUDELMANN, and  
SENECA COUNTY DISTRICT ATTORNEY RICHARD E. SWINEHART,  
Defendants/Respondents.

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**BRIEF OF UNITED STATES AS AMICUS CURIAE  
IN SUPPORT OF APPELLANT**

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## Introduction

As a matter of federal law, the Cayuga Indian Nation is a federally recognized Indian Tribe, *see* 73 Fed. Reg. 18,553 (Apr. 4, 2008), and retains a reservation in New York State that was acknowledged as a federal reservation in the 1794 Treaty of Canandaigua. The Supreme Court in *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), expressly declined to rule on issues related to the status of the Oneida reservation, which was also acknowledged in the Treaty of Canandaigua. Consequently, the Second Circuit’s earlier holding in that case that the Oneida reservation is still in existence remains the law in the Second Circuit and is fully applicable to the Cayuga.

The U.S. Supreme Court has spoken regarding the duty of tribes to collect taxes on cigarette sales to non-Indians to the extent required by state law. *See Dep’t of Taxation and Finance of New York v. Milhelm Attea & Bros., Inc.*, 512 U.S. 61(1994); *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251 (1992). “Because New York lacks authority to tax cigarettes sold to tribal members for their own consumption, . . . cigarettes to be consumed on the reservation by enrolled tribal members are tax exempt and need not be stamped. On-reservation cigarette sales to persons other than reservation Indians, however, are legitimately subject to state taxation.” *Milhelm Attea*, 512 U.S. at 64 (citation omitted). Therefore, the Cayuga Nation has no immunity under federal law from state-law obligations to collect and remit taxes on cigarette sales to non-Indians.

In this case, however, the Cayuga Nation does not claim tribal sovereign immunity from taxation under federal law. Instead, the Tribe argues that a state statute renders the sales at issue here non-taxable. The state statute at issue here, however, uses the term “reservation.” N.Y. Tax

Law §§ 470(16)(a), 471-e. The United States files this brief to explain the proper meaning of that term under federal law, because the trial court looked in part to federal law to interpret that term. The trial court’s analysis of federal law was flawed for the following reasons. The United States expresses no opinion on the other issues of state law presented in this appeal.

### Argument

#### A. The Cayuga reservation remains intact.

##### 1. Historic Background.

The Cayuga Nation was part of the Six Nations, an alliance of Iroquois-speaking Tribes predating Columbus. *Cayuga Indian Nation of New York v. Pataki*, 165 F. Supp. 2d 266, 304 (N.D.N.Y. 2001), *rev’d*, 413 F.3d 266 (2d Cir. 2005). “Prior to the Revolutionary War, Cayuga territory comprised approximately 1700 square miles, spanning from Lake Ontario southward into Pennsylvania.” *Id.* In 1788 and 1789, New York negotiated several agreements with constituents of the Six Nations, including the Cayugas, in which the Tribe ceded much of its land to the State, but retained a 64,000-acre reservation “for their own use and cultivation but not to be sold, leased or in any other manner aliened or disposed of to others [.]” *Id.* at 315; *see also id.* at 321; *Cayuga*, 413 F.3d at 268.

“With the adoption of the Constitution, Indian relations became the exclusive province of federal law.” *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 234 (1985) (*Oneida II*). On November 11, 1794, the United States and the Six Nations entered into the Treaty of Canandaigua. 7 Stat. 44. In Article 2, the United States “acknowledge[d] the lands reserved to the Oneida, Onondaga and Cayuga Nations, in their respective treaties with the state of New York, and called their reservations, to be their property.” 7 Stat. 45. Article 2 further provided

that “the United States will never claim the same, nor disturb” the Tribes “in the free use and enjoyment” of those lands, and that “the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.” *Id.* In the 1794 Treaty, “the [U.S.] agreed to ratify the [State’s] Treaty of Albany of 1789 recognizing the existence of the Cayuga Reservation [i.e. the 64,000 acres],” *Cayuga*, 165 F. Supp. 2d at 328 (alterations in original); *see also Cayuga*, 413 F.3d at 269; *City of Sherrill*, 544 U.S. at 204-5 (Treaty of Canandaigua acknowledged the Oneida reservation), and the United States provided a federal guarantee of the Cayuga’s ownership, free use and enjoyment, and protection against alienation of the reservation land.

“Despite Congress’ clear policy that no person or entity should purchase Indian land without the acquiescence of the Federal Government, in 1795 the State of New York began negotiations to buy . . . [Indian] land.” *Oneida II*, 470 U.S. at 232; *see also* 1 Stat. 137, *codified as amended at* 25 U.S.C. § 177. In 1795, the State of New York acquired the remainder of the lands within the Cayuga reservation, “except for a three-square-mile area on the eastern shore of Cayuga Lake.” *Cayuga*, 413 F.3d at 269. “It is undisputed that this [transaction] was never explicitly ratified by a treaty of the Federal Government.” *Id.* In 1807, the State acquired the remainder of the Cayugas’ land. *Id.* “Again, the Federal Government never explicitly ratified this [transaction].” *Id.*

2. Disestablishment of a reservation requires clear congressional intent.

“[O]nly Congress can divest a reservation of its land and diminish its boundaries.” *City of Sherrill*, 544 U.S. at 215 n.9 (quoting *Solem v. Bartlett*, 465 U.S. 463, 470 (1984)). “Once a block of land is set aside for an Indian Reservation and no matter what happens to the title of

individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise.” *Solem*, 465 U.S. at 470; *see also Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 586-587 (1977) (“The mere fact that a reservation has been opened to settlement does not necessarily mean that the opened area has lost its reservation status.”). A court may not find that a reservation has been disestablished in the absence of clear congressional intent. *DeCoteau v. District County Court for Tenth Judicial Dist.*, 420 U.S. 425, 444 (1975); *see also Solem*, 465 U.S. at 470; *Mattz v. Arnett*, 412 U.S. 481, 504-5 (1973).

3. Congress has not disestablished the Cayuga reservation.

In *City of Sherrill*, the Second Circuit held that land the Oneida Nation purchased on the open market was exempt from state and local property taxation because the land was “located on the Oneidas’ historic reservation land set aside for the tribe under the Treaty of Canandaigua.” *Oneida Indian Nation of New York v. City of Sherrill*, 337 F.3d 139, 156 (2d Cir. 2003); *see also id.* at 156 n.13, 165, 167. Guided by the Supreme Court’s disestablishment jurisprudence, *see id.* at 159-160, the Second Circuit concluded that reservation diminishment or disestablishment requires “a textually grounded intention to diminish supported by legislative history” along with “other support such as contemporaneous congressional and administrative statements, proclamations opening the reservation to settlement, the state’s assumption of jurisdiction over the opened lands, and the subsequent pattern of settlement.” *Id.* at 160. The court of appeals rejected the defendant’s contentions that the 1838 Treaty of Buffalo Creek had disestablished the 1794 reservation, *id.* at 158, 160-65, and that the land lost its federally protected status because the Oneida Nation had not existed continuously since the establishment of the reservation, *id.* at 165-67.

Briefing in the U.S. Supreme Court focused on those issues. As explained below, the Supreme Court reversed, but expressly declined to reach those questions. 544 U.S. at 215 n.9; *see also id.* at 222-23 (Stevens, J., dissenting). Therefore, the Second Circuit’s holdings in *City of Sherrill* remain binding circuit precedent. *See In re Sokolowski*, 205 F.3d 532, 534-35 (2d Cir. 2000) (“[T]his court is bound by a decision of a prior panel unless and until its rationale is overruled, implicitly or expressly, by the Supreme Court or this court en banc.” (internal quotes and citations omitted)); *Roman v. Abrams*, 822 F.2d 214, 225-27 (2d Cir. 1987) (regarding prior panel opinion “as stating the current law of this Circuit” where Supreme Court’s vacatur of that prior decision did not “undermine[] [its] analysis”).

The district court in *Cayuga v. Village of Union Springs* correctly adhered to the Second Circuit’s decision in *City of Sherrill* when it held that “because there has been no congressional act to terminate the reservation status of the Property, it remains within the Nation’s reservation land.” 317 F. Supp. 2d 128, 143 (N.D.N.Y. 2004); *see also id.* at 137 (acknowledging that the Oneida and Cayuga reservations were both “confirmed by the United States in the 1794 Treaty of Canandaigua”). The district court also followed the Second Circuit in rejecting the argument that the 1838 Treaty of Buffalo Creek terminated the Cayuga reservation. *Id.* at 143. After the Supreme Court decided *City of Sherrill*, the Second Circuit remanded with instructions to reconsider, and the district court vacated its earlier injunction, holding that the Cayuga Nation does not enjoy sovereign immunity from local zoning. *Cayuga v. Village of Union Springs*, 390 F. Supp. 2d 203 (N.D.N.Y. 2005). The court did not, however, question its earlier conclusion that the Cayuga reservation survives to this day.

B. The Supreme Court's decision in *City of Sherrill* and the Second Circuit's decision in *Cayuga v. Pataki* are irrelevant here.

The Supreme Court's decision in *City of Sherrill* has no bearing on the reservation status of Cayuga lands. The Oneida Indian Nation of New York filed suit seeking to prevent the City of Sherrill from taxing land the State had purchased from the Oneida in violation of the Trade and Intercourse Act in 1805 and that the Oneida had reacquired on the open market in 1997. The Oneida asserted that the reacquisition of legal title restored tribal sovereignty over the reacquired parcels. The Supreme Court expressly declined to decide the issues the parties had briefed, including the reservation status of the land. 544 U.S. at 214 n.8 (“We resolve this case on considerations not discretely identified in the parties’ briefs.”). Instead, the Court held that the relief the Oneida sought was barred by equitable considerations that the parties had not briefed, *see id.* at 222 (Souter, J., concurring); *id.* at 224, 225 n.5 (Stevens, J., dissenting). Concluding that the circumstances of the case “evoke the doctrines of laches, acquiescence, and impossibility,” the Supreme Court held that those circumstances “render inequitable the piecemeal shift in governance this suit seeks unilaterally to initiate.” *See id.* at 221. The Court stated that, “[i]f [the tribe] may unilaterally reassert sovereign control and remove these parcels from the local tax rolls, little would prevent the Tribe from initiating a new generation of litigation to free the parcels from local zoning or other regulatory controls.” *Id.* at 220. The Court declined to grant the relief the Oneida sought, explaining that the “long lapse of time, during which the Oneidas did not seek to revive their sovereign control through equitable relief in court, and the attendant dramatic changes in the character of the properties, preclude OIN from gaining the disruptive remedy it now seeks.” *Id.* at 214, 216-17. Thus, the Supreme Court in

*City of Sherrill* held that equitable considerations limit the relief the Oneidas may seek in court in connection with their reservation lands, but it did not hold that the Oneidas have no reservation or that the reservation has been disestablished. Indeed, the Court stated explicitly that it was not reaching the Second Circuit’s holding that the reservation survived, and the Court emphasized that “only Congress can divest a reservation of its land and diminish its boundaries.” *Id.* at 216 n.9 (quoting *Solem*, 465 U.S. at 470).

Several months later, the Second Circuit, with one judge dissenting in part, reversed the district court’s award of almost \$248 million in damages to the Cayuga for land obtained by the State of New York in violation of the Trade and Intercourse Act. *Cayuga*, 413 F.3d at 266. The majority understood the Supreme Court in *City of Sherrill* to have held that “equitable doctrines, such as laches, acquiescence, and impossibility,” *id.* at 273, can “apply to ‘disruptive’ Indian land claims,” *id.* at 274, “even when such a claim is legally viable and within the statute of limitations,” *id.* at 273. Although the district court had awarded only money damages, the court found that ejectment was the Tribes’ “preferred remedy,” *id.* at 274, and that “this type of possessory land claim . . . is indisputably disruptive,” *id.* at 275. Accordingly, the court held that the Tribes’ claim was subject to laches. *Id.* Like the Supreme Court in *City of Sherrill*, the Second Circuit in *Cayuga* expressly declined to reach the reservation question. 413 F.3d at 269 n.2.

The holdings in those two cases have no bearing on this appeal. In this case, the Cayuga Nation does not base its claim on tribal sovereign immunity from taxation. Instead, the Tribe bases its claim on a state statute and the use in that statute of the term “reservation.” Hence, the discussions of sovereignty in *City of Sherrill* and *Cayuga* have no bearing on the question before

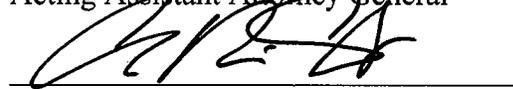
this Court. Moreover, the Cayuga did not initiate this action in order to reassert their sovereign, governmental, or regulatory control over their land. Rather, the Tribe brought this action in response to Cayuga and Seneca Counties' initiation of criminal proceedings, and the Tribe did so promptly. In addition, the remedy the Cayugas seek in this case is far from "disruptive"; the Counties are the parties seeking to disturb the *status quo*.

Conclusion

For the forgoing reasons, the Cayuga reservation remains intact.

Respectfully submitted,

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