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December 2, 2010

VIA E-MAIL AND FEDERAL EXPRESS

Honorable William K. Suter
Clerk
Supreme Court of the United States
One First Street N.E.
Washington, DC 20543
dmcnerney@supremecourt.gov

Re: Madison County and Oneida County, New York v. Oneida Indian Nation of New York, No. 10-72

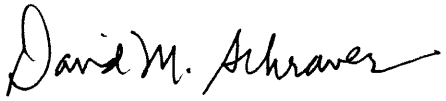
Dear General Suter:

We write on behalf of the petitioners, Madison County and Oneida County, in reply to the most recent letter of respondent's counsel, dated December 2, 2010. The parties now appear to agree that the Court should direct them to file separate submissions addressing the impact, if any, of respondent's November 29, 2010 "declaration and ordinance." Petitioners respectfully suggest that the Court direct the parties to submit simultaneous briefs on this issue, to be followed by the submission of simultaneous responses. In the meantime, petitioners will serve and file their opening brief tomorrow, December 3, pursuant to the Court's long-established schedule, without attempting to respond in that brief to respondent's unanticipated action earlier this week.

We disagree with many of the comments and arguments in respondent's latest letter to the Court, but we suspect the Court would prefer to receive briefs on the new issues respondent has attempted to inject into this case rather than receive continued letters on the subject. We must underscore again, however, that we strongly disagree with any suggestion that respondents have somehow succeeded in unilaterally mooting or "remov[ing] from the case" the First Question Presented. Respondent continues to claim that it has "tribal sovereign immunity" with respect to *in rem* measures against the non-trust lands at issue here – it simply claims to have now "given up" that claimed "immunity" in this instance. (Pp. 3-4.) But as petitioners will demonstrate in their opening brief, respondent has *no* "tribal sovereign immunity" to be "given up" with respect to these lands in the first instance. As petitioners will demonstrate separately, that issue has not been rendered moot by respondent's action this week. We also strongly disagree with the suggestion that supplemental briefing focus simply on "whether the decision below should be

vacated with instructions to address the other grounds for the injunctions." (P. 4.) Even if respondent were found to have unilaterally mooted the First Question Presented, the appropriate disposition would be to vacate the judgment below "with directions to the District Court to dismiss" respondent's claims of "tribal sovereign immunity" with respect to these lands, and to ensure that such dismissal were "with prejudice." *Deakins v. Monaghan*, 484 U.S. 193, 200 (1988). Finally, we note that respondent's unilateral action this week has no bearing whatsoever on the Second Question Presented, and that respondent's arguments with respect to *that* question are simply a rehash of the same arguments it made in opposing *certiorari.*

Very respectfully,



David M. Schraver

cc Seth P. Waxman, Esq. (via e-mail)