10-4265

10-4272, 10-4598, 10-4758
10-4477, 10-4976, 10-4981

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ONEIDA NATION OF NEW YORK,
Plaintiff-Appellee

SENECA NATION OF INDIANS,
Plaintiff-Appellee-Cross-Appellant

v.

DAVID PATERSON, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF NEW YORK, JAMIE WOODWARD, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER OF THE NEW YORK DEPARTMENT OF TAXATION AND FINANCE, WILLIAM J. COMISKEY, IN HIS OFFICIAL CAPACITY AS DEPUTY COMMISSIONER FOR THE OFFICE OF TAX ENFORCEMENT FOR THE NEW YORK DEPARTMENT OF TAXATION AND FINANCE,
Defendants-Appellants,

JOHN MELVILLE,
Defendant-Appellant-Cross-Appellee

CAYUGA INDIAN NATION OF NEW YORK,
Intervenor-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

OPPOSITION BRIEF FOR CAYUGA INDIAN NATION OF NEW YORK

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THE CAYUGA NATION IS ENTITLED TO A PRELIMINARY INJUNCTION TO PROTECT ITS SOVEREIGN AUTHORITY OVER ON-RESERVATION ECONOMIC ACTIVITY.

These consolidated appeals present challenges brought by numerous Indian nations to New York's newly enacted scheme for taxing on-reservation sales of cigarettes. Over the course of the last several decades, cigarette sales have become a critical component of the economic livelihood of many New York tribes and provide the mainstay of their ability to render services to their members and to maintain a tribal identity. Indeed, for Indian nations that do not have gaming operations, including the Cayuga, cigarette sales are almost the exclusive source of tribal income. In recognition of that fact, New York State for many years made a voluntary decision not to require Indian nations to collect state excise taxes on any on-reservation cigarette sales. The State viewed the question of how to share this important source of revenue for mutual sovereigns as a difficult one best addressed through negotiation.

That approach changed abruptly in the middle of 2010, when the State hastily enacted the regulatory scheme now before the Court. The State unilaterally imposed new rules, which oblige Indian nations across the State to collect state excise taxes on cigarettes sold on reservation lands. In doing so, the State crafted a

scheme that imposes burdens on the tribes that are unnecessary and excessive, and therefore constitutionally impermissible.

I. The Cayuga Nation Is Likely To Prevail On Its Claim That New York's Tax Collection Scheme Unconstitutionally Burdens Tribal Sovereignty.

A. The State's New Tax Scheme Violates Indian Sovereignty By Requiring Indian Nations To Prepay Substantial Sums Of State Taxes On Cigarettes That Ultimately Are Sold To Non-Tribal Members.

As described in greater detail in the Cayuga Nation's opening brief, apart from the small numbers of cigarettes sold through the "coupon" system or the "prior approval" system for tribal sales to members, the State's new tax scheme requires wholesalers to add the amount of the tax to the sales price of cigarettes for all wholesale sales to Indian nations or reservation retailers for later resale to non-Indian consumers. Thus, when a tribe purchases cigarettes from a wholesaler for sale to non-members, it pays not only the wholesale price for the cigarettes, but also an additional $43.50 per carton, which constitutes prepayment of the state excise tax. For the entire time that the carton is held in inventory before it is sold, those funds essentially have been loaned by the Indian nation to the State, without interest.

This avoidable aspect of the tax scheme is unlawful in two respects. First, by failing to provide any compensation for the State's use of an Indian nation's funds, the prepayment mechanism constitutes a direct tax on operations of the tribe

and thus violates the Supreme Court's "categorical" rule against state taxation of Indian tribes without congressional consent. *Okla. Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 458 (1995). Second, even if the prepayment obligation is not viewed as an impermissible state tax upon the on-reservation activities of an Indian nation, it nonetheless exceeds the "minimal," "reasonably necessary" burdens that may be imposed on an Indian tribe in collecting state taxes on cigarette sales to non-members under *Moe*, *Colville*, and *Milhelm Attea*. *Washington v. Confederated Tribes of Colville Indian Reservation* 447 U.S. 134, 151 (1980); *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 483 (1976); *Dep't of Taxation & Fin. of N.Y. v. Milhelm Attea & Bros.*, 512 U.S. 61, 73-74 (1994).

In its opening brief, the State seeks to counter these contentions by claiming that New York's pre-payment requirement is "identical" to the prepayment obligations upheld by the Supreme Court in *Moe* and *Colville*. N.Y. Br. at 36. That is incorrect. Although the tax schemes upheld in *Moe* and *Colville* did involve pre-collection of taxes by tribal retailers, the taxes at issue here are more than 25 times greater per carton. The Supreme Court has never upheld a prepayment tax collection scheme of this magnitude imposed upon an Indian nation.

In its effort to portray these challenges as already decided, the State points to a single footnote in the plaintiff tribes' brief in *Moe*, in which the tribes noted that an Indian retailer had been forced to make "an interest free loan to the state." NY Br. at 33. The Supreme Court did not address this passing comment in its decision in *Moe*, which is hardly surprising given that appellate courts routinely ignore arguments that a party raises only in a footnote. *John Doe, Inc. v. Mukasey*, 549 F.3d 861, 878 n.13 (2d Cir. 2008).

The magnitude of the State's new pre-collection obligation renders it a tax "imposed directly on the seller," *Moe*, 425 U.S. at 482. It certainly cannot be viewed as a minimal, reasonably necessary burden, particularly when alternatives exist, such as a scheme in which the State pays interest on the use of the money prepaid by an Indian nation for the period that cigarettes remain in inventory before sale. *See, e.g.*, *Love v State*, 583 N.E.2d 1296, 1298 (N.Y. 1991) (requiring State of New York to pay interest as "simply the cost of having the use of another person's money"). Other alternatives also may exist, such as allowing the tribes an initial inventory of cigarettes without prepayment of tax.

The State attempts to overcome the obvious difficulties posed by the magnitude of the new tax by claiming that the amount of the tax is irrelevant to the constitutional analysis. NY Br. at 38. That argument, however, cannot be squared with *Moe*, *Colville*, and *Milhelm Attea*, in which the Supreme Court repeatedly

made clear that a state may impose only minimal, reasonably necessary burdens in requiring an Indian tribe to assist in the collection of state taxes on reservation sales. Nowhere in those cases did the Supreme Court suggest that the magnitude of the tax is irrelevant to the assessment of the burdens that a taxation scheme imposes on a tribe. Indeed, such a suggestion would have been nonsensical. The greater the amount of the tax that must be pre-collected, the greater the size of the interest-free loan that a tribe is forced to make to the State. A pre-payment obligation of $43.50 per carton far exceeds the minimal, reasonably necessary burden allowed by the Supreme Court.

The recent district court decision in *Confederated Tribes and Bands of the Yakama Nation v. Gregoire*, 680 F. Supp. 2d 1258, 1264 (E.D. Wash. 2010), currently on appeal to the Ninth Circuit (Case No. 10-35776), is not to the contrary. NY Br. at 35. In *Gregoire*, the district court held only that the legal incidence of Washington's cigarette tax fell on the non-Indian purchaser rather than the tribe, and thus did not violate the Supreme Court's categorical rule against state taxation of tribes. *Gregoire*, 680 F. Supp. at 1263-64. The court did not address the alternative argument raised here – namely, that the amount of the tax constituted more than a "minimal," "reasonably necessary" burden under *Moe*, *Colville*, and *Milhelm Attea*. *See id.* Further, the amount of New York's cigarette tax is more than double the tax at issue in *Gregoire*. *See* Plaintiffs' Memorandum

in Opposition to Defendants' Motion for Summary Judgment at 3 n.1, *Confederated Tribes and Bands of the Yakama Nation v. Gregoire*, 680 F. Supp. 2d 1258 (E.D. Wash. 2010), *available at* 2009 WL 2203097 (noting current tax rate of $20.25 per carton).

In short, although the State may require tribes to collect state taxes on cigarette sales to non-members, the scheme the State has chosen impermissibly imposes a direct tax upon the tribe and imposes more than minimal, reasonably necessary burdens upon the tribe.

B. The Prior Approval System Violates Indian Sovereignty By Failing To Protect An Indian Nation's Right To Obtain Tax-Exempt Cigarettes For Its Members' Use From A Source Of The Nation's Own Choosing.

In its opening brief, the State makes the astonishing claim that the default prior approval system "imposes no burdens on tribal governments at all." NY Br. at 51. Only by ignoring the statute, regulations, and evidentiary record below could the State make such an erroneous assertion. As explained in greater detail in the Cayuga Nation's opening brief, by placing a tribe's entire supply of tax-free cigarettes under the complete control of *any* wholesaler that is first to claim the tribe's quota, the prior approval system violates Indian sovereignty in two related respects.

First, the prior approval system deprives an Indian nation of the right to decide from whom it will acquire tax-free cigarettes for its own use and for

transactions with members. The State utterly fails to address this fundamental defect in its opening brief. As State witness Bartlett confirmed at the evidentiary hearing, *any* wholesaler in the state – whether or not it has ever had a business relationship with an Indian nation – can "claim" some or all of the nation's quota of tax-free cigarettes. JA333. Thus, the prior approval system makes no accommodation for the fact that many tribes traditionally acquire cigarettes from particular wholesalers, who often have an Indian affiliation. Instead of allowing the tribes to select the wholesalers who may claim part or all of a tribe's quota of tax-free cigarettes, the State has designed the system so as to grant wholesalers complete control. That is a direct affront to the tribes' sovereign right to trade with the wholesalers of their choosing.

Second, by allowing a single wholesaler to monopolize a tribe's supply of tax-free cigarettes, the prior approval system fails to protect the right of an Indian nation to obtain an adequate amount of tax-exempt cigarettes for its members. Through the monopolization of a tribe's quota of tax-free cigarettes, a wholesaler can drive up a tribe's price of tax-free cigarettes and prevent a tribe's members from obtaining tax-free cigarettes, thus forcing them to go off reservation and obtain taxed cigarettes.

Although the State goes to great lengths to argue that the risk of monopolization is highly speculative, both Judge Hurd and Judge Arcara correctly

concluded otherwise. Judge Hurd found that the prior approval system was "ripe for manipulation by wholesalers, and actually incentivizes wholesalers to claim [a tribe's] allotments in order to leverage for a higher sales price to the [tribe]." SPA62. He further found that the prior approval system "would allow a wholesaler . . . to monopolize [a tribe's] allotment to prevent tax-free sales[,] forcing members to purchase taxed cigarettes at non-Indian retailers for their own consumption," and that such monopolization could be "fueled by anti-Indian sentiments." *Id.* Judge Arcara similarly found that "the system creates the incentive for a single wholesaler to acquire as much of the quota as possible so that s/he can then resell the tax-exempt cigarettes to reservation retailers at a premium." SPA32. Furthermore, Judge Arcara found that monopolization was "a very realistic possibility," SPA33, and that it would "eviscerate[] any tax savings to the individual member" of the tribe. SPA34.

The State also attempts to escape from the monopolization problem by blaming it on private parties, rather than the State. That is pure fiction. The State is fully responsible for every aspect of the system it designed, including the ability of any wholesaler to take complete control of a tribe's supply of tax-free cigarettes. There is nothing inevitable about this aspect of the design and the State has the power to change it. Although the State claims that designing the system to prevent monopolization would "embroil the State in the Tribes' business affairs," the State

offers no support for that claim. NY Br. at 58. A design that prevents monopolization by granting wholesalers fewer powers would properly respect the sovereignty of the tribes. As it currently stands, the prior approval system grants wholesalers virtually complete control over the sale of tax-free cigarettes to Indian nations.

As noted in the Cayuga Nation's opening brief, the prior approval system does not even contain the elementary requirement that a wholesaler submit proof of an actual purchase order from the tribe before claiming some or all of a tribe's tax-free quota. Indeed, the State's 1988 tax cigarette scheme, which was upheld against a facial challenge in *Milhelm Attea*, required wholesalers to submit "evidence of valid purchase orders" from the tribe. *Milhelm Attea*, 512 U.S. at 66 (internal quotation marks omitted).

In a final effort to defend the prior approval system, the State claims that the tribes can easily protect themselves by preventing abusive wholesalers from doing business on their reservations. That claim, too, is a fiction. Nothing in the statute, the regulations, or the Department's informal guidance gives a tribe the ability to prevent a particular wholesaler from claiming some or all of a tribe's quota. SPA33. As noted above, the State's own witness confirmed that any wholesaler can claim a tribe's quota. Even though a tribe has the legal power to prevent a specific wholesaler from doing business on the reservation, the prior approval

system does not make any accommodation for that power and instead allows any wholesaler to circumvent it.

C. The Tax Scheme's Coupon System Is Not A Viable Alternative To The Prior Approval System Because It Violates The Tribes' Right To Self-Government.

As explained in greater detail in the Cayuga Nation's opening brief, although the State's new tax scheme provides the tribes with a coupon system as an ostensible alternative to the prior approval system, the coupon system is itself defective because it interferes with the tribes' right to self government. By "leaving the tribe[s] with the obligation to determine how [the] coupons should be redeemed, allocated and distributed," SPA11, the coupon system would require tribes like the Seneca and Mohawk that currently act as responsible regulators of free market tobacco economies to become central authorities in new "command and control" style economies. This radical transformation is fundamentally inconsistent with tribal sovereignty, and far exceeds the minimal, reasonably necessary burdens approved by the Supreme Court in *Moe*, *Colville*, and *Milhelm Attea*. The coupon system's substantial interference in the retail operations of the larger tribes renders it invalid as to all tribes in the State. *See Cayuga Indian Nation of New York v. Gould*, 930 N.E.2d 233, 255 (N.Y.) (noting necessity for a uniform statewide system for regulating cigarette sales to tribes), *cert. denied*, 131 S. Ct. 353 (2010).

Although the State claims that the coupon system is less burdensome than the tax-free cigarette allocation mechanisms in *Colville* and *Milhelm Attea*, that is incorrect. NY Br. at 45-48. As Judge Arcara noted, "[e]xisting Supreme Court decisions do not speak to the issue of whether compelling a tribe to make coupon-allocation decisions unconstitutionally burdens its right of tribal self sovereignty." SPA30. In *Milhelm Attea*, the burden of distributing the coupons to individual retailers was borne solely by the State, not the tribes. *Id.* More importantly, in upholding a coupon system in principle in *Milhelm Attea*, the Supreme Court expressly declined to determine how that system would "affect tribal self-government." 512 U.S. at 69-70; SPA30. The scheme at issue *Colville* did not involve a coupon system at all and did not require tribes to make decisions about how to allocate tax-free cigarettes among tribal retailers. Thus, neither *Milhelm Attea* nor *Colville* supports the State's position.

The State also argues that the coupon system is not unduly burdensome because it "permits tribal governments to decide for themselves how to distribute tax exempt cigarettes in the hands of the tribes," NY Br. at 45, and "imposes no specific, affirmative duties on tribal governments," leaving them "free to distribute the coupons in any way they wish, including not at all," *id.* at 46. Such feigned respect for Indian sovereignty completely ignores the real world consequences of the coupon system. The tribes cannot avoid the unwanted role of "coupon czar"

simply by choosing not to distribute any coupons. As Judge Arcara recognized, "[i]n order for the coupon system to work, the Nation must distribute the coupons." SPA29. If no coupons are distributed, then no tax-free cigarettes would be available for purchase by a tribe's members, thus depriving them of their individual right to purchase untaxed cigarettes from reservation retailers. *Id.* In other words, if a tribe does not distribute the coupons, it "will be actively interfering with the right of its members to purchase untaxed cigarettes." *Id.*

As a fallback position, the State attempts to minimize the transformation in tribal tobacco economies required by the coupon system by claiming that the tribes' current regulations are "pervasive" and would merely need to be "adapt[ed]." NY Br. at 48. As explained in greater detail in the briefs submitted by the Seneca and Mohawk nations, that is grossly inaccurate. The coupon system would require a radical change in the ways those tribes regulate their tobacco economies. Indeed, the changes required by the coupon system led Judge Arcara to conclude that "[t]he task of allocating coupons among [a tribe's] retailers may be somewhat more onerous than the 'minimal burden' approved of by the Supreme Court in *Moe*, *Colville* and their progeny." SPA30. Paradoxically, the State accuses the tribes of having "incorrect notions of what sovereignty entails," when it is plainly the State that misunderstands the concept. NY Br. at 50.

II. Denying Preliminary Injunctive Relief Will Cause Irreparable Harm To The Cayuga Nation.

In claiming that the tribes have made no showing of irreparable harm, the State ignores the numerous cases that have found irreparable harm where enforcement of a statute or regulation threatened to infringe on a tribe's right to sovereignty. *See, e.g.*, *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1255 (10th Cir. 2006) ("an invasion of tribal sovereignty can constitute irreparable injury"); *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250-51 (10th Cir. 2001) (holding that infringement of tribal sovereignty constitutes irreparable injury because "it [can] not be adequately compensated for in the form of monetary damages"); *Kiowa Indian Tribe of Okla. v. Hoover*, 150 F.3d 1163, 1171-72 (10th Cir. 1998) (holding that irreparable injury was shown where "seizure of tribal assets" and "prohibition against full enforcement of tribal laws" interfered with "the Tribe's self-government"); *Seneca-Cayuga Tribe of Okla. v. Okla. ex rel. Thompson*, 874 F.2d 709, 716 (10th Cir. 1989) (finding irreparable injury where threatened loss of revenues and jobs created "prospect of significant interference with [tribal] self-government"); *Winnebago Tribe of Neb. v. Stovall*, 216 F. Supp. 2d 1226, 1233 (D. Kan. 2002) (finding irreparable injury where "scope of tribal sovereignty" is threatened because such "cannot be measured in dollars"), *aff'd*, 341 F.3d 1202 (10th Cir. 2003). Judge Hurd properly relied on these cases in granting a preliminary injunction, and Judge Arcara correctly relied on them in

finding that irreparable injury would occur absent a stay pending appeal. *See* SPA41-42; SPA59-60.

The two aspects of the tax scheme challenged by the Cayuga Nation – the precollection obligation requiring the Cayuga Nation itself to prepay what today is a very substantial tax long before a legitimately taxable transaction occurs, and the prior approval scheme that allows wholesalers to dictate with whom the Nation must do business – are direct affronts to the lawful, independent sovereignty of the Cayuga Nation. Contrary to the State's assertions, these harms are not speculative or attenuated. NY Br. at 67-68. The precollection obligation is certain to occur if the tax scheme goes into effect, and, as Judge Arcara found, there is "a very realistic possibility" that a single wholesaler would attempt to monopolize a tribe's entire quota of cigarettes. SPA33. These are genuine harms that undermine the doctrine of tribal sovereignty recognized in our Nation's jurisprudence for over 175 years.

Furthermore, as Judge Arcara rightly concluded, enforcement of the tax scheme will cause irreparable harm because "[t]he potential loss of an entire economy that currently supports many of each Nation's members and services is a harm that cannot be measured by monetary damages alone." SPA42. Although the State has the power to require Indian nations to assist in the collection of state excise taxes on cigarette sales to non-members, that power is limited to imposing

only minimal, reasonably necessary burdens on the tribes. Until New York develops a tax scheme that respects this fundamental limitation on state power, its interference in the Cayuga Nation's tobacco economy is impermissible and would cause irreparable damage. Thus, there is no merit to the State's assertion that "the Tribes cannot claim irreparable injury based on the loss of tax-free sales that they have no right to make." NY Br. at 69. The Cayuga Nation's claim of irreparable injury is based on the harms that flow from the State's imposition of an unconstitutional scheme for collecting state excise taxes. The Cayuga Nation has the inherent sovereign right to remain free from unlawful state interference.[1]

III. Granting Preliminary Injunctive Relief Is In The Public Interest.

Contrary to the State's assertions, granting a preliminary injunction will serve the public interest. The Supreme Court has made clear that the states have the power to require Indian nations to assist in the collection of state excise taxes, but only in a manner that respects an Indian nation's "historic immunity from state and local control" and "Congress' overriding goal of encouraging tribal self-sufficiency and economic development." *New Mexico v. Mescalero Apache Tribe*,

[1] The Cayuga Nation is on a fundamentally different footing from the employee who was removed from the board of directors in *Adam-Mellang v. Apartment Search, Inc.*, 96 F.3d 297, 300 (8th Cir. 1996), the case relied upon by the State. NY Br. at 69. Although the employee had no right to remain on the board of directors, the Cayuga Nation has the right to remain free from state tax schemes that impose greater than minimal, reasonably necessary burdens on the tribe

462 U.S. 324, 332, 335 (1983) (internal quotation marks omitted). For the reasons explained above and in the Cayuga Nation's opening brief, New York's new tax scheme flouts this important limitation on state power by placing substantial burdens on tribal sovereignty. There is nothing inevitable or necessary in the collection mechanism the State has chosen here. The Cayuga Nation respectfully submits that until such time as the State promulgates a cigarette tax collection scheme that respects the sovereignty of Indian nations and imposes only constitutionally permissible, minimal burdens upon the tribes to assist in the collection of state excise taxes, the Cayuga Nation is entitled to a preliminary injunction against enforcement of the scheme.

Although the State claims that the public interest would be served by adhering to the Legislature's original schedule for implementing the tax scheme, that argument is baseless. After decades of forbearance by the State, the Legislature hastily enacted the new scheme without going through the normal notice and comment process. This rushed approach yielded a scheme that rides roughshod over tribal sovereignty, resulting in the many legal challenges now before the Court. The public has no interest in adhering to a hasty schedule that yielded an unconstitutional scheme for taxing on-reservation cigarette sales.

The State also claims that a preliminary injunction would harm the State's interest in protecting public health by limiting cigarette consumption. NY Br. at

71-72. That claim is specious because, as Judge Hurd found, the Legislature enacted the new scheme in order to raise revenue, not decrease smoking. SPA65-66 & n.6. Furthermore, "the goals of raising revenue and assuring the public health by reducing cigarette use are contradictory, for if less cigarettes are used by the public fewer taxes will be paid and tax revenue will be lower." SPA66 n.6. The State does not even attempt to address this contradiction in its opening brief, and its belated effort to provide a public health justification for the tax scheme should be rejected.

In addition, although the State contends that the injunctions are depriving it and the public of approximately $500,000 a day in tax revenue, that argument presumes that the new tax scheme is constitutional, which it is not. NY Br. at 72-73. The State and the public have no interest in receiving tax revenue from a scheme that far exceeds the boundaries imposed by the Supreme Court. Furthermore, the public interest is disserved by the possibility that the Cayuga Nation may cease to be financially viable and may no longer be able to provide vital tribal services to its members as a result of the State's unconstitutional scheme. Preliminary relief would merely leave in place the status quo that has existed since the cigarette tax's 1939 enactment, while the district court gives full consideration to whether the State's hasty effort to disrupt the status quo is consistent with federal law.

Finally, there is no merit to the State's claim that the preliminary injunctions sought by the tribes exceed the scope of their legal challenge. NY Br. at 73-74. As the State is well aware, the tribes have challenged the constitutionality of the tax scheme's precollection obligation, which would apply to each and every on-reservation sale of cigarettes to non-members of a tribe. In addition, the tribes have challenged the constitutionality of the coupon and prior approval systems that would govern the distribution of tax-free cigarettes to tribes for their own use. Thus, the tribes' challenges to the tax scheme affect the full range of on-reservation retail sales of cigarettes to members and non-members. Given the breadth of those challenges, the scope of the preliminary injunctive relief sought by the tribes is entirely appropriate. Despite its complaints of overbreadth, the State has not attempted to propose a narrower preliminary injunction.

CONCLUSION

For the foregoing reasons and for the reasons stated in the Cayuga Nation's opening brief, the district court's October 14, 2010 order denying the Cayuga Nation's motion for a preliminary injunction should be reversed and the district court should be directed to grant the motion, pending further proceedings in this action.

Dated: February 4, 2011

Respectfully submitted,

/s/ David W. DeBruin

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Dated: February 4, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2011, a true and correct copy of the foregoing Opposition Brief for Cayuga Indian Nation Of New York was served on all counsel of record in this appeal via CM/ECF pursuant to Local Rule 25.1(h)(1) & (2).

/s/ David W. DeBruin