

05-6408-cv (L)
Oneida Indian Nation v. Madison County

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term, 2007

4 (Argued: November 6, 2007; Originally Decided: April 27, 2010;
5 Vacated and Remanded by the Supreme Court of the United States:
6 January 10, 2011; Final Submission on Remand: February 7,
7 2011; Decided: October 20, 2011)

8 Docket Nos. 05-6408-cv (L); 06-5168-cv (CON); 06-5515-cv (CON)

9 -----

10 ONEIDA INDIAN NATION OF NEW YORK,
11 Plaintiff-Counter-Defendant-Appellee,

12 - v -

13 MADISON COUNTY AND ONEIDA COUNTY, NEW YORK,
14 Defendants-Counter-Claimants-Appellants,

15 STOCKBRIDGE-MUNSEE COMMUNITY, BAND OF MOHICAN INDIANS,
16 Putative Intervenor-Appellant.

17 -----

18 Before: CABRANES, SACK, and HALL, Circuit Judges.

19 Consolidated appeals from judgments of the United
20 States District Court for the Northern District of New York

1 (David N. Hurd, Judge). In separate actions, the Oneida Indian
2 Nation of New York (OIN) brought suit against Madison County and
3 Oneida County to enjoin them from assessing property tax on OIN-
4 owned property, acquired on the open market in the 1990s, and
5 from enforcing those taxes through tax sale or foreclosure. On
6 cross-motions for summary judgment in each action, the district
7 court entered judgment in favor of the OIN on four separate
8 grounds: (1) tribal sovereign immunity from suit; (2) the
9 Nonintercourse Act, 25 U.S.C. § 177; (3) constitutional due
10 process; and (4) property-tax exemptions under New York state
11 law. On appeal, we affirmed solely on the basis that the OIN's
12 tribal sovereign immunity from suit barred the Counties from
13 undertaking foreclosure proceedings against it. See Oneida
14 Indian Nation of N.Y. v. Madison County, 605 F.3d 149 (2d Cir.
15 2010). The U.S. Supreme Court granted the Counties' petition for
16 a writ of certiorari, after which the OIN declared that it had
17 waived its tribal sovereign immunity from suit. The Supreme
18 Court then vacated our prior decision and remanded for further
19 proceedings. See Madison County v. Oneida Indian Nation of N.Y.,
20 131 S. Ct. 704 (2011) (per curiam). Upon the return of these
21 appeals to our Court, we conclude that the OIN has abandoned its
22 claims premised on tribal sovereign immunity from suit as well as
23 its claims based upon the Nonintercourse Act. In proceeding to

1 review the remaining two grounds supporting the district court's
2 judgments, we conclude that the district court erred in ruling
3 that the Counties' redemption-notice procedures failed to comport
4 with due process. We further conclude that the district court
5 should not exercise supplemental jurisdiction over the OIN's
6 state-law claims. Finally, we affirm as to several ancillary
7 matters.

8 Affirmed in part, reversed in part, and vacated in
9 part, with instructions.

10 On original appeal: DAVID M. SCHRAVER, David H. Tennant,
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10 On remand from
11 U.S. Supreme Court:

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26 Schneiderman, Attorney General, for
27 Amicus Curiae State of New York.

28 SACK, Circuit Judge:

29 These consolidated appeals, which have been returned to
30 us on remand from the United States Supreme Court, once again
31 call upon us to consider whether -- and, if so, on what grounds
32 -- the plaintiff-appellee, the Oneida Indian Nation of New York
33 (the "OIN"), is entitled to restrain the defendants-appellants,
34 Madison County and Oneida County (the "Counties"), from
35 foreclosing upon certain fee-title properties, acquired on the

1 open market by the OIN in the 1990s, for which the OIN has
2 refused to pay property tax. In our previous opinion, Oneida
3 Indian Nation of N.Y. v. Madison County, 605 F.3d 149 (2d Cir.
4 2010) ("Oneida I"), we concluded that the Counties were barred
5 from foreclosing on these properties by virtue of the OIN's
6 tribal sovereign immunity from suit. We therefore affirmed the
7 judgments of the United States District Court for the Northern
8 District of New York (David N. Hurd, Judge), which had issued
9 parallel injunctions barring the Counties from enforcing their
10 property-tax regimes against the OIN's properties through tax
11 sale or foreclosure. See Oneida Indian Nation v. Oneida County,
12 432 F. Supp. 2d 285, 292 (N.D.N.Y. 2006) ("Oneida County I");
13 Oneida Indian Nation of N.Y. v. Madison County, 401 F. Supp. 2d
14 219, 231-32 (N.D.N.Y. 2005) ("Madison County I"). Although the
15 district court rested its grant of judgment in each case on four
16 independent grounds -- (1) the OIN's tribal sovereign immunity
17 from suit; (2) federal restrictions on the alienation of tribal
18 lands under the Nonintercourse Act, 25 U.S.C. § 177; (3)
19 inadequate notice to the OIN of the expiration of the Counties'
20 respective redemption periods, in violation of due process; and
21 (4) the exemption of "Indian reservation[s]" from property tax
22 under New York state law, see Oneida County I, 432 F. Supp. 2d at
23 289-90; Madison County I, 401 F. Supp. 2d at 227-31 -- our
24 decision on appeal affirmed the judgments solely on the basis of

1 tribal sovereign immunity from suit. See Oneida I, 605 F.3d at
2 160.

3 Subsequent to our decision in Oneida I, the Counties
4 successfully petitioned the United States Supreme Court for a
5 writ of certiorari. While the case was pending before the
6 Supreme Court, however, the OIN notified the Court that it had
7 voluntarily waived its tribal sovereign immunity from suit. In
8 light of that factual development, the Supreme Court vacated our
9 judgment in Oneida I and remanded for further proceedings. The
10 Court has instructed us, on remand, to "address, in the first
11 instance, whether to revisit [our] ruling on sovereign immunity
12 in light of this new factual development, and -- if necessary --
13 proceed to address other questions in the case consistent with
14 [our] sovereign immunity ruling." Madison County v. Oneida
15 Indian Nation of N.Y., 131 S. Ct. 704, 704 (2011) (per curiam).

16 After reviewing the parties' submissions on remand from
17 the Supreme Court, we conclude that the district court's
18 judgments can no longer be sustained on the basis we relied upon
19 in Oneida I. The OIN has affirmatively disclaimed any reliance
20 on the doctrine of tribal sovereign immunity from suit, and it
21 thereby abandoned its declaratory claims against the Counties to
22 the extent that they depended on such immunity. We further
23 conclude that the OIN has abandoned its declaratory claims
24 premised upon the Nonintercourse Act, 25 U.S.C. § 177.

1 Those dispositions leave two grounds remaining in
2 support of the district court's judgments: the OIN's due-process
3 claims, based upon the Counties' alleged failure to provide
4 adequate notice to the OIN of the expiration of the redemption
5 periods applicable to each County's respective tax-enforcement
6 proceedings, and the OIN's claims that its properties are exempt
7 from taxation under New York Indian Law § 6 and New York Real
8 Property Tax Law § 454.

9 With respect to the due-process claims, we conclude
10 that the district court erred in ruling that the redemption
11 notices failed to comport with due process. We reverse the
12 district court to the extent that it entered judgment in the
13 OIN's favor on its claims for violations of the Fourteenth
14 Amendment.

15 With respect to the OIN's claims arising under state
16 tax law, we conclude that concerns of comity, fairness, and
17 judicial economy warrant that we and the district court decline
18 to exercise supplemental jurisdiction over them. We vacate the
19 district court's judgments to the extent that they rest upon a
20 determination that the OIN is entitled to property-tax exemptions
21 under state law, and we remand with instructions to the district
22 court to dismiss without prejudice the OIN's state-law claims.
23 Because no grounds remain in support of the district court's

1 award of permanent injunctive relief, we also vacate both
2 injunctions in their entirety.

3 Finally, we affirm, in whole or in part, the district
4 court's determinations as to several ancillary matters: First,
5 we affirm the district court's subsidiary ruling in the Oneida
6 County litigation (a ruling also arguably implicit in the Madison
7 County litigation) that the OIN is not liable to pay penalties or
8 interest for unpaid taxes accruing prior to March 29, 2005, on
9 the ground that the Counties have forfeited their defense on this
10 issue. Second, as in Oneida I, we affirm the district court's
11 decision to decline to abstain from this litigation. Third, we
12 affirm the denial of a motion by the Stockbridge-Munsee
13 Community, Band of Mohican Indians seeking to intervene in this
14 litigation. Lastly, we affirm the district court's dismissal of
15 the Counties' counterclaims seeking a declaration that the Oneida
16 Nation's ancient reservation was disestablished.

17 **BACKGROUND**

18 The background facts of this protracted and
19 procedurally convoluted litigation are set forth in various
20 opinions of this and other Courts. See, e.g., City of Sherrill
21 v. Oneida Indian Nation of N.Y., 544 U.S. 197, 203-12 (2005)
22 ("Sherrill III"); Oneida I, 605 F.3d at 152-56; Oneida Indian
23 Nation of N.Y. v. City of Sherrill, 337 F.3d 139, 146-52 (2d Cir.
24 2003) ("Sherrill II"), rev'd, Sherrill III, 544 U.S. 197; Oneida

1 Indian Nation of N.Y. v. City of Sherrill, 145 F. Supp. 2d 226,
2 232-36 (N.D.N.Y. 2001) ("Sherrill I"), aff'd in part, vacated and
3 remanded in part, Sherrill II, 337 F.3d 139, rev'd, Sherrill III,
4 544 U.S. 197.¹ We repeat them only insofar as we think necessary
5 to an understanding of our resolution of these appeals.

6 The Oneida Nation's Ancient Reservation

7 The OIN is a federally recognized Indian tribe that is
8 directly descended from the original Oneida Indian Nation
9 ("Oneida Nation"), one of six Iroquois nations.² Sherrill III,
10 544 U.S. at 203. The Oneida Nation's homeland once encompassed
11 "some six million acres in what is now central New York [State]."

¹ The short-form citations employed in this decision differ from those used in our previous decision of April 2010. For example, the 2003 Second Circuit decision that we previously referred to as "Oneida I" is now referred to as "Sherrill II."

² We have previously cautioned:

Despite our use of the "OIN" acronym, the Oneida Indian Nation of New York should not be confused with the original Oneida Indian Nation, which is not a federally recognized tribe and is not a party to these consolidated cases. . . . [T]he original Oneida Indian Nation became divided into three distinct bands, the New York Oneidas, the Wisconsin Oneidas, and the Canadian Oneidas, by the middle of the nineteenth century.

Sherrill II, 337 F.3d at 144 n.1. Today, those three bands are known as the Oneida Indian Nation of New York (i.e., the OIN); the Oneida Tribe of Indians of Wisconsin; and the Oneida Nation of the Thames, respectively. See Oneida Indian Nation of N.Y. v. Madison County, 145 F. Supp. 2d 268, 269-70 (N.D.N.Y. 2001), rev'd, Sherrill II, 337 F.3d 139, rev'd, Sherrill III, 544 U.S. 197.

1 Id. In 1788, pursuant to the Treaty of Fort Schuyler between the
2 Oneida Nation and the State of New York, the Oneida Nation ceded
3 title to the vast majority of its lands and retained a
4 reservation of approximately 300,000 acres. Id. In 1790,
5 Congress passed the first Indian Trade and Intercourse Act, also
6 known as the Nonintercourse Act, a law barring the alienation of
7 tribal land absent the acquiescence of the federal government.³
8 See Act of July 22, 1790, ch. 33, 1 Stat. 137. In 1794, the
9 United States and various Iroquois nations, including the Oneida
10 Nation, entered into the Treaty of Canandaigua. "That treaty
11 both 'acknowledge[d]' the Oneida Reservation as established by
12 the Treaty of Fort Schuyler and guaranteed the Oneidas' 'free use
13 and enjoyment' of the reserved territory." Sherrill III, 544
14 U.S. at 204-05 (brackets in original) (quoting Act of Nov. 11,
15 1794, art. II, 7 Stat. 44).

16 Despite the provisions of the Nonintercourse Act,
17 substantial portions of the Oneida Nation's remaining reservation
18 lands were thereafter conveyed to New York State and private
19 parties without federal permission. See id. at 205-06; Sherrill
20 II, 337 F.3d at 147-48. And by the early nineteenth century, the

³ The Nonintercourse Act remains substantially in force today. See Sherrill III, 544 U.S. at 204 & n.2. The statute, codified at 25 U.S.C. § 177(a), bars the "purchase, grant, lease, or other conveyance of lands . . . from any Indian nation or tribe of Indians . . . unless the same be made by treaty or convention entered into pursuant to the Constitution." See also 25 C.F.R. § 152.22(b).

1 federal government itself, in apparent disregard of its
2 commitments under the Treaty of Canandaigua, "pursued a policy
3 designed to open reservation lands to white settlers and to
4 remove tribes westward." Sherrill III, 544 U.S. at 205.

5 By 1838, the Oneida Nation had sold all but 5,000 acres
6 of its reservation. Id. at 206. That year, the United States
7 and various Indian tribes in New York, including the Oneida
8 Nation, entered into the Treaty of Buffalo Creek, an agreement
9 that contemplated the eventual removal of all remaining Native
10 Americans in New York to reservation lands in Kansas.⁴ See Act
11 of Jan. 15, 1838, 7 Stat. 550. These efforts were not completed,
12 however, and federal efforts to relocate the New York Oneidas to
13 Kansas ended by 1860. See Sherrill III, 544 U.S. at 207.
14 Nonetheless, by 1920, only thirty-two acres of the Oneida
15 Nation's ancient reservation remained in tribal possession. See
16 id.

17 In the mid-twentieth century, descendants of the
18 Oneida Nation began seeking legal relief -- first through
19 proceedings before the Indian Claims Commission, and later
20 through litigation in federal court -- for the allegedly unlawful
21 dispossession of their ancestral lands. Id. at 207-08. In 1970,

⁴ As we will discuss further below, the parties vigorously dispute whether the Treaty of Buffalo Creek effected a legal disestablishment or diminishment of the Oneida Nation's ancient reservation.

1 the OIN and the Oneida Indian Tribe of Wisconsin instituted a
2 "test case" against Oneida County and Madison County alleging
3 that the Oneida Nation's cession of some 100,000 acres to the
4 State of New York in 1795 had violated the federal Nonintercourse
5 Act and therefore had not terminated the Oneidas' legal right to
6 possess those lands. Id. at 208. The Oneidas subsequently
7 received several favorable decisions from the United States
8 Supreme Court. See Oneida Indian Nation of N.Y. v. Oneida
9 County, 414 U.S. 661 (1974) ("County of Oneida I") (upholding
10 federal jurisdiction over the Oneidas' complaint); Oneida County
11 v. Oneida Indian Nation of N.Y., 470 U.S. 226 (1985) ("County of
12 Oneida II") (ruling that the Oneidas had stated a claim for
13 damages under federal common law). In 1974, a few months after
14 the Oneidas' success in the Supreme Court in County of Oneida I,
15 the OIN initiated a more comprehensive land claim against the
16 Counties. See Oneida Indian Nation of N.Y. v. County of Oneida,
17 No. 5:74-CV-187 (N.D.N.Y. filed May 3, 1974) (the "Land Claim
18 Litigation"). Later, the United States intervened as a
19 plaintiff, and the State of New York was added as a defendant.
20 That litigation, which centers on the OIN's claims to more than
21 250,000 acres of ancestral lands that are not currently in the
22 OIN's possession, continues to the present day. See Oneida
23 Indian Nation of N.Y. v. County of Oneida, 617 F.3d 114, 119-21
24 (2d Cir. 2010) (surveying procedural history of the Land Claim

1 Litigation), cert. denied, --- U.S. ----, 2011 WL 1933740, 2011
2 U.S. LEXIS 7494 (U.S. Oct. 17, 2011). However, the Land Claim
3 Litigation is not directly at issue in the present appeals. The
4 appeals before us are only about lands that the OIN reacquired on
5 the open market in the 1990s and now possesses.

6 The OIN's Land Purchases and the
7 City of Sherrill Litigation

8 In the early 1990s, the OIN began to reacquire, through
9 voluntary, free-market transactions, lands that had once been a
10 part of the Oneida Nation's reservation, but which later passed
11 into the possession of New York State or private, non-Indian
12 titleholders, who thereafter held title to them in fee simple.
13 See Sherrill II, 337 F.3d at 144, 156. Before the OIN's recent
14 reacquisition of these fee-title lands -- which are located
15 within Madison County and Oneida County and in various cities
16 therein, including the City of Sherrill -- the lands had been
17 subject to property taxation.

18 After acquiring the lands in the 1990s, the OIN refused
19 to pay property tax upon them. The OIN contended that these
20 properties fell within the Oneida Nation's reservation as
21 recognized by the Treaties of Fort Schuyler and Canandaigua and
22 that the OIN's re-purchase of those lands had resuscitated the
23 tribe's "sovereign dominion over the parcels." Sherrill III, 544
24 U.S. at 213. In asserting that the fee-title lands remained part
25 of its reservation, the OIN principally relied upon the Supreme

1 Court's 1985 decision in County of Oneida II, which held that the
2 OIN was entitled to bring suit under federal common law for the
3 wrongful alienation of its ancestral lands, see 470 U.S. at 253-
4 54.

5 One of the taxing authorities within whose jurisdiction
6 some of the reacquired lands fell, the City of Sherrill,
7 responded to the OIN's refusal to pay property taxes by selling
8 three of the OIN's properties at a tax sale. See Sherrill I, 145
9 F. Supp. 2d at 232-33. The City itself purchased the properties,
10 and it later began formal eviction proceedings. Id. In
11 response, in February 2000, the OIN brought suit against the City
12 of Sherrill in the United States District Court for the Northern
13 District of New York seeking a declaration that the lands in
14 question were "Indian country" as defined by federal law, see 18
15 U.S.C. § 1151, and were therefore exempt from state and municipal
16 taxation. Id. at 237. Two weeks later, the City of Sherrill
17 began a summary eviction proceeding in state court seeking to
18 evict the OIN from the three parcels. The OIN removed the
19 eviction action to federal court. See id. at 233, 238. At about
20 the same time, the OIN also brought a declaratory-judgment suit
21 against Madison County, which had initiated in rem tax-
22 foreclosure proceedings on certain OIN-owned properties. Id. at
23 239-40. These three cases, along with a fourth lawsuit brought
24 by the City of Sherrill against individual OIN members, were

1 designated as related and assigned to Judge David N. Hurd. See
2 generally Sherrill II, 337 F.3d at 144-45 (identifying and
3 describing these four cases); Sherrill I, 145 F. Supp. 2d at 236-
4 40 (same).

5 The district court, accepting the OIN's theory that the
6 repurchased fee-title lands constituted "Indian country" within
7 the meaning of 18 U.S.C. § 1151, granted summary judgment in the
8 OIN's favor in all of the related lawsuits and enjoined both the
9 City of Sherrill and Madison County from further attempts to
10 collect property tax.⁵ See Sherrill I, 145 F. Supp. 2d at 267-
11 68. On appeal, we affirmed the district court's judgments in
12 each of the three lawsuits involving the City of Sherrill, see
13 Sherrill II, 337 F.3d at 155-69, but vacated the judgment in the
14 suit involving Madison County on procedural grounds, see id. at
15 146, 170-71. The City of Sherrill successfully petitioned the
16 United States Supreme Court for a writ of certiorari, and the
17 OIN's lawsuit against Madison County was held in abeyance pending
18 the outcome of the City of Sherrill's Supreme Court appeal.

19 In 2005, in reviewing our decision in Sherrill II, the
20 Supreme Court focused its attention on a question that it had

⁵ In a separate opinion, the district court also denied Madison County's motion to dismiss pursuant to Fed. R. Civ. P. 19 based upon the OIN's failure to join two parties: the Oneida Tribe of Indians of Wisconsin and the Oneida of the Thames. See Oneida Indian Nation of N.Y. v. Madison County, 145 F. Supp. 2d 268 (N.D.N.Y. 2001). We affirmed that determination on appeal. See Sherrill II, 337 F.3d at 169-70.

1 reserved two decades before: "'whether equitable considerations
2 should limit the relief available to the present day Oneida
3 Indians.'" Sherrill III, 544 U.S. at 209 (quoting County of
4 Oneida II, 470 U.S. at 253 n.27). Answering that question in the
5 affirmative, the Supreme Court held that "standards of federal
6 Indian law and federal equity practice preclude[d] the [OIN] from
7 rekindling embers of sovereignty that long ago grew cold." Id.
8 at 214 (internal quotation marks omitted). The Court explained:

9 [T]he distance from 1805 to the present day,
10 the Oneidas' long delay in seeking equitable
11 relief against New York or its local units,
12 and developments in the city of Sherrill
13 spanning several generations, evoke the
14 doctrines of laches, acquiescence, and
15 impossibility, and render inequitable the
16 piecemeal shift in governance this suit seeks
17 unilaterally to initiate.

18 Id. at 221; see also id. at 215 n.9. The Supreme Court therefore
19 reversed our judgment in Sherrill II, which had affirmed the
20 injunctions entered in the OIN's favor. But the Court
21 acknowledged that it had not squarely addressed all of the
22 questions that the parties had briefed, see Sherrill III, 544
23 U.S. at 214 n.8, including whether the ancient Oneida Nation
24 reservation had been disestablished or diminished by the 1838
25 Treaty of Buffalo Creek, see id. at 215 n.9.

26 The Counties' Subsequent Attempts
27 to Foreclose on the OIN's Land
28

29 Following the Supreme Court's ruling in Sherrill III
30 that the OIN did not possess "sovereign authority" over the

1 reacquired properties, id., the OIN reached a settlement with the
2 City of Sherrill. See Madison County I, 401 F. Supp. 2d at 223
3 n.2 (noting settlement). The OIN was unable, however, to reach
4 agreement with two other taxing authorities: Madison County and
5 Oneida County.

6 Madison County. Beginning in 1999, Madison County
7 commenced annual in rem tax-enforcement proceedings against
8 parcels of land that had been repurchased by the OIN in the 1990s
9 and on which the OIN had refused to pay taxes.⁶ From 2000
10 onward, however -- after the filing of the Madison County
11 litigation in the Northern District of New York -- Madison County
12 followed a practice of initiating such proceedings only to
13 withdraw them without prejudice in anticipation of a resolution
14 of the taxability question in federal court. It continued to do
15 so until, in 2003, this Court separated the ongoing Madison
16 County litigation from the City of Sherrill litigation and
17 remanded the Madison County suit to the district court for
18 further proceedings. See Sherrill II, 337 F.3d at 171.

19 On November 14, 2003, Madison County began a tax-
20 enforcement process with respect to some ninety-eight parcels of
21 OIN-owned property by including those parcels on a list of

⁶ Madison County's tax-enforcement procedures, which are governed by Article 11 of the New York Real Property Tax Law, are described in further detail in Part III.B.1 of the Discussion section, below.

1 delinquent taxes filed with the county clerk. This time,
2 however, Madison County did not abandon the tax-enforcement
3 process as to the OIN-owned parcels. Instead, in December 2004,
4 the County proceeded to execute a petition of foreclosure in New
5 York state court. Notice of this filing was sent to the OIN by
6 certified mail on December 8, 2004, and published in local
7 newspapers in December 2004 and January 2005. The notice
8 established March 31, 2005, as the last day that the properties
9 could be redeemed from foreclosure by full payment of back taxes,
10 plus penalties and interest. Id. Just two days before the final
11 day for redemption, on March 29, 2005, the Supreme Court decided
12 Sherrill III. See 544 U.S. 197. In light of this development,
13 Madison County subsequently extended the redemption period for
14 the OIN's properties until June 3, 2005, and later to July 14,
15 2005.

16 In the meantime, on March 30, 2005, the OIN filed a
17 verified answer in the state-court foreclosure action. On April
18 28, 2005, Madison County moved for summary judgment in the state-
19 court action. Madison County maintains that as of May 15, 2005,
20 the OIN owed it approximately \$3 million in unpaid property
21 taxes, penalties, and interest.

22 Oneida County. Similarly, in the years prior to 2005,
23 Oneida County appears to have followed a practice of beginning,
24 but not completing, its tax-enforcement procedures with respect

1 to OIN-owned lands.⁷ However, after the Supreme Court's decision
2 in Sherrill III in March 2005, Oneida County began to implement
3 fully its tax-enforcement procedures against OIN-owned
4 properties. On June 3, 2005, Oneida County's Deputy Commissioner
5 of Finance hand-delivered notices to the OIN with regard to
6 fifty-nine parcels that had been sold at tax sale three years
7 prior. Oneida County I, 432 F. Supp. 2d at 288. These notices
8 specified that the OIN would have until July 29, 2005, to remit
9 all unpaid taxes, penalties, and interest or else forever lose
10 its legal interest in the properties. Id. Oneida County
11 subsequently delivered additional final-redemption notices to the
12 OIN for another sixty-two parcels on September 26, 2005, and an
13 additional sixty-six parcels on October 27, 2005. Id. Oneida
14 County maintains that, as of November 30, 2005, the OIN owed it
15 approximately \$5 million in unpaid property taxes, penalties, and
16 interest.

17 The Post-Sherrill III District Court Proceedings

⁷ Unlike Madison County, Oneida County does not follow Article 11 of the New York Real Property Tax Law; instead, it follows its own tax-enforcement procedures, which provide for a tax sale followed by transfer of title. See Oneida County I, 432 F. Supp. 2d at 287. These procedures are described in Part III.B.2 of the Discussion section, below.

Despite the fact that Oneida County employs a tax-sale procedure rather than simple foreclosure, we occasionally use the term "foreclosure" generically in this opinion to refer to the tax-enforcement procedures of both Madison County and Oneida County.

1 In an effort to prevent each of the Counties from
2 completing its respective tax-enforcement procedures, the OIN
3 sought declaratory and injunctive relief in federal court. As to
4 Madison County, against which litigation had been pending since
5 March 2000, the OIN moved in June 2005 for a preliminary
6 injunction to restrain all further efforts to foreclose upon OIN-
7 owned property. The district court granted that motion and
8 issued such an injunction on July 1, 2005. See Oneida Indian
9 Nation of N.Y. v. Madison County, 376 F. Supp. 2d 280, 283
10 (N.D.N.Y. 2005) (awarding injunction).

11 As to Oneida County, the OIN filed suit against it for
12 the first time in July 2005. The OIN obtained a temporary
13 restraining order against Oneida County on October 28, 2005,
14 barring it from further tax-enforcement efforts with respect to
15 the OIN's property. This restraining order was then effectively
16 converted into a preliminary injunction by stipulation of the
17 parties. See Oneida County I, 432 F. Supp. 2d at 286 (describing
18 procedural history with respect to preliminary relief).

19 The parties then brought cross-motions for summary
20 judgment in each lawsuit. The district court granted the OIN's
21 respective motions and entered judgment in its favor in each
22 case. See Oneida County I, 432 F. Supp. 2d at 292; Madison
23 County I, 401 F. Supp. 2d at 232-33. In concluding that the
24 Counties could not enforce their property taxes through tax sale

1 or foreclosure, the district court rested its determination on
2 four independent grounds: (1) the OIN's tribal sovereign immunity
3 from suit, see Oneida County I, 432 F. Supp. 2d at 289; Madison
4 County I, 401 F. Supp. 2d at 228-29; (2) the Nonintercourse Act's
5 restrictions on the alienability of tribal land, see Oneida
6 County I, 432 F. Supp. 2d at 289; Madison County I, 401 F. Supp.
7 2d at 227-28; (3) the Counties' failures to give the OIN adequate
8 notice of the expiration of the respective redemption periods in
9 violation of principles of due process, see Oneida County I, 432
10 F. Supp. 2d at 289-90; Madison County I, 401 F. Supp. 2d at 230;
11 and (4) the exemption of OIN-owned properties from property
12 taxation as a matter of state law, see Oneida County I, 432 F.
13 Supp. 2d at 290; Madison County I, 401 F. Supp. 2d at 231. The
14 district court also concluded that the OIN could not be compelled
15 to pay penalties or interest on any unpaid taxes by virtue of the
16 OIN's tribal sovereign immunity from suit. See Oneida Indian
17 Nation of N.Y. v. Oneida County, No. 6:05-CV-945, slip op. at 2-3
18 (N.D.N.Y. Nov. 2, 2006), ECF No. 41 ("Oneida County II"); Madison
19 County I, 401 F. Supp. 2d at 230. Finally, the district court
20 issued declarations in each case that the Oneida Nation had not
21 been disestablished by the 1838 Treaty of Buffalo Creek. See
22 Oneida County I, 432 F. Supp. 2d at 292; Madison County I, 401 F.
23 Supp. 2d at 231, 233.

1 At a different point in each litigation, the district
2 court also denied motions by the Stockbridge-Munsee Community,
3 Band of Mohican Indians ("Stockbridge") to intervene as of right
4 pursuant to Fed. R. Civ. P. 24(a), based upon Stockbridge's claim
5 to a six-square-mile reservation encompassing some of the parcels
6 in dispute. See Oneida Indian Nation of N.Y. v. Madison County,
7 235 F.R.D. 559, 562-63 (N.D.N.Y. 2006) ("Madison County II");
8 Oneida County I, 432 F. Supp. 2d at 291-92.⁸

9 The Proceedings on Appeal to this Court: Oneida I

10 Following a round of post-judgment motion practice in
11 each lawsuit, each County appealed from the grant of summary
12 judgment and entry of injunctive relief against it. Stockbridge

⁸ More specifically, Stockbridge asserts that fifty-two of the parcels in dispute -- two in Oneida County, and fifty in Madison County -- are part of its own undiminished reservation as recognized by the 1794 Treaty of Canandaigua. Before the district court, Stockbridge argued that the existence of its land claim made it an indispensable party to these proceedings, and that its tribal sovereign immunity from suit would, in turn, require dismissal of the lawsuit at least with respect to those parcels over which Stockbridge lays claim. The district court denied Stockbridge's motion to intervene on the basis that Stockbridge had failed to demonstrate a sufficient interest in the instant litigation. See Oneida County I, 432 F. Supp. 2d at 291-92; Madison County II, 235 F.R.D. at 562-63.

Stockbridge is seeking the adjudication of its land claim in a separate lawsuit pending in the Northern District of New York, litigation within which the OIN has appeared as a defendant-intervenor. See Amended Complaint, Stockbridge-Munsee Cmty. v. New York, No. 3:86-CV-1140 (N.D.N.Y. Aug. 5, 2004), ECF No. 228. That lawsuit is currently stayed pending a decision by the Supreme Court whether to grant a writ of certiorari to review our Court's decision in Oneida Indian Nation of N.Y. v. County of Oneida, 617 F.3d 114 (2d Cir. 2010).

1 also appealed, asserting error in the district court's denial of
2 its motion to intervene in the Oneida County litigation. We
3 consolidated the three appeals. The State of New York appeared
4 as amicus curiae in support of the Counties, while the United
5 States, upon order of this Court, also appeared as amicus
6 supporting the OIN.

7 After a brief stay and several rounds of supplementary
8 submissions,⁹ we affirmed the district court's judgments in the
9 OIN's favor, but solely on the basis that tax sale and
10 foreclosure of the OIN's properties were barred by the doctrine

⁹ Both the stay and the supplementary submissions resulted from ongoing factual developments. These developments, which are described in our previous opinion, see Oneida I, 605 F.3d at 155-56, involved efforts by the OIN to have the lands at issue (amounting to roughly 17,000 acres) taken into trust by the federal government as authorized by 25 U.S.C. § 465, thereby exempting them from state or local taxation. As required by federal trust regulations, see 25 C.F.R. pt. 151, the OIN posted letters of credit securing the payment of all taxes, penalties, and interest determined by the courts to be lawfully due. Three years after the OIN filed its initial request, by Record of Decision issued on May 20, 2008, the Department of the Interior determined that it would take approximately 13,000 acres of the land into trust. See 73 Fed. Reg. 30,144 (May 23, 2008).

Thereafter, a number of entities -- including the State of New York, Madison County, Oneida County, various cities and towns, the Stockbridge tribe, and several local citizens' groups -- filed suit against the Secretary of the Interior to challenge his decision to take the OIN's lands into trust. See, e.g., New York v. Salazar, No. 6:08-CV-644, 2009 WL 3165591, at *1 n.2, 2009 U.S. Dist. LEXIS 90071, at *3 n.2 (N.D.N.Y. Sept. 29, 2009) (identifying related cases filed in Northern District of New York). All but one of those lawsuits remain pending, and as a result, the transfer of lands into trust has not yet been finalized. Those lawsuits do not affect our disposition of the instant appeals.

1 of tribal sovereign immunity from suit. See Oneida I, 605 F.3d
2 at 156-60. We expressly declined to reach any of the "other
3 three rationales relied upon by the district court" in ruling in
4 the OIN's favor.¹⁰ Id. at 160.

5 With respect to Stockbridge, we affirmed the denial of
6 its motion to intervene, agreeing with the district court that it
7 "lacked an interest in the instant litigation." Id. at 162; see
8 id. at 161-63. We also noted that our ground for decision
9 "render[ed] minimal the likelihood that Stockbridge w[ould] be
10 prejudiced by its failure to be allowed to intervene." Id. at
11 163.

12 The Proceedings Before the Supreme Court in 2010-11

13 Following our decision in Oneida I, the Counties
14 petitioned the United States Supreme Court for a writ of
15 certiorari, proposing two questions for review: (1) "whether
16 tribal sovereign immunity from suit, to the extent it should
17 continue to be recognized, bars taxing authorities from
18 foreclosing to collect lawfully imposed property taxes"; and (2)
19 "whether the ancient Oneida reservation in New York was
20 disestablished or diminished." Petition for Writ of Certiorari
21 at i, Madison County v. Oneida Indian Nation of N.Y., No. 10-72

¹⁰ One of the members of this panel filed a separate concurrence, for himself and another member of this panel, inviting Supreme Court review of our application of the doctrine of tribal sovereign immunity from suit. See Oneida I, 605 F.3d at 163-64 (Cabranes, J., concurring).

1 (U.S. July 9, 2010) ("Counties' Cert. Petition"). The Supreme
2 Court granted the Counties' petition, see 131 S. Ct. 459 (2010),
3 and ordered merits briefing.

4 On November 29, 2010, the OIN's tribal council convened
5 and issued a declaration and ordinance waiving "[the OIN's]
6 sovereign immunity to enforcement of real property taxation
7 through foreclosure by state, county and local governments within
8 and throughout the United States."¹¹ Oneida Indian Nation of

¹¹ The declaration reads as follows:

TO OUR BROTHERS, on 2 December 1794, here at our
homelands of the Oneida Nation, a Treaty was entered
into with the United States of America which reflected
the unique and special relationship between our
governments . . . ; and

BROTHERS, just one month before, on 11 November 1794,
the United States made the Treaty of Canandaigua, . . .
confirming, among other things, the ongoing government-
to-government relationship between the United States
and the Nation; and

BROTHERS, the Nation chooses to preserve its
sovereignty and also its rights acknowledged by the
United States in its treaty relationship with the
Nation, and also wishes to promote a peaceful and
harmonious relationship with its neighbors today and
unto the Seventh Generation; and

BROTHERS, that peaceful and harmonious relationship
would be served by removing any controversy or doubt as
to the Nation's ongoing commitment to resolve disputes.

NOW, THEREFORE, PURSUANT TO THE AUTHORITY VESTED IN THE
NATION BY VIRTUE OF ITS SOVEREIGNTY AND INHERENT POWERS
OF SELF GOVERNMENT,

The Nation hereby waives, irrevocably and perpetually,
its sovereign immunity to enforcement of real property

1 N.Y., Declaration of Irrevocable Waiver of Immunity, Ordinance
2 No. 0-10-1 (Nov. 29, 2010) (the "Waiver Declaration"). The next
3 day, the OIN sent a letter notifying the Supreme Court that the
4 OIN had waived its immunity with respect to "the pending tax
5 foreclosure proceedings directly at issue in this case and to all
6 future tax foreclosure proceedings involving the [OIN]'s land."
7 Letter from Seth P. Waxman, Esq., to Hon. William K. Suter, Clerk
8 of the Supreme Court of the United States, at 1, Madison County
9 v. Oneida Indian Nation of N.Y., No. 10-72 (U.S. Nov. 30, 2010).
10 The OIN suggested that in light of this development, "the Court
11 may wish to direct the parties to address how this matter should
12 proceed." Id.

13 The Counties responded by letter dated December 1,
14 2010. Emphasizing that the OIN's Waiver Declaration occurred
15 just four days before the submission deadline for their opening
16 merits brief, the Counties asserted that the OIN's waiver
17 "appear[ed] to be a classic example of a litigant 'attempting to
18 manipulate the Court's jurisdiction to insulate a favorable
19 decision from review.'" Letter from David M. Schrauer, Esq., to
20 Hon. William K. Suter, Clerk of the Supreme Court of the United

taxation through foreclosure by state, county and local
governments within and throughout the United States.
The Nation does not waive any other rights, challenges
or defenses it has with respect to its liability for,
or the lawful amount of, real property taxes.

ENACTED THIS 29th DAY OF NOVEMBER, 2010.

1 States, at 1, Madison County v. Oneida Indian Nation of N.Y., No.
2 10-72 (U.S. Dec. 1, 2010) (quoting City of Erie v. Pap's A.M.,
3 529 U.S. 277, 288 (2000)). The Counties also questioned the
4 scope and permanence of the Waiver Declaration, arguing that the
5 OIN's waiver was susceptible both of being read narrowly and of
6 being revoked by a future tribal council. The Counties therefore
7 argued that the waiver had not caused the question of tribal
8 sovereign immunity from suit to become moot. See id. at 2-4.

9 The OIN replied the next day. See Letter from Seth P.
10 Waxman, Esq., to Hon. William K. Suter, Clerk of the Supreme
11 Court of the United States, Madison County v. Oneida Indian
12 Nation of N.Y., No. 10-72 (U.S. Dec. 2, 2010) ("OIN December 2
13 Letter"). The OIN conceded that the timing of its waiver "at
14 this stage of the litigation [was] unusual," id. at 1, but argued
15 that the waiver had not been intended to frustrate the Court's
16 jurisdiction. Instead, the OIN characterized its Waiver
17 Declaration as a "good-faith effort[]" to address the Counties'
18 concerns about the sufficiency of certain letters of credit that
19 the OIN had posted as part of the federal land-into-trust
20 process.¹² Id. at 2. The Waiver Declaration, according to the
21 OIN, was "intended to remove any doubt" surrounding the letters
22 of credit by providing the Counties with "the necessary
23 assurances that any amounts [of taxes, penalties, and interest]

¹² See supra note 9.

1 due will be paid once they are judicially determined." Id. at 1-
2 2. The OIN also responded to the Counties' concerns about the
3 scope and permanence of the Waiver Declaration by representing
4 that the waiver covered all taxes, penalties, and interest that
5 were "lawfully due" and that the waiver was "irrevocable and
6 perpetual." Id. at 2 (brackets and internal quotation marks
7 omitted). Finally, the OIN posited that its waiver had "removed
8 [the issue of sovereign immunity from suit] from the case," id.
9 at 3, and suggested that the Court "direct submissions from the
10 parties to address whether the decision below [i.e., Oneida I]
11 should be vacated with instructions to address the other grounds
12 for the injunctions," id. at 4.

13 A final letter from the Counties followed later the
14 same day. See Letter from David M. Schrauer, Esq., to Hon.
15 William K. Suter, Clerk of the Supreme Court of the United
16 States, Madison County v. Oneida Indian Nation of N.Y., No. 10-72
17 (U.S. Dec. 2, 2010). The Counties expressed their "strong[]
18 disagree[ment]" with the OIN's view that its Waiver Declaration
19 had caused the issue of tribal sovereign immunity from suit to
20 become moot. Id. at 1. The Counties agreed with the OIN,
21 however, that "the Court should direct them to file separate
22 submissions addressing the impact, if any," of the OIN's Waiver
23 Declaration. Id. Despite this flurry of letters, the Counties
24 proceeded to file their opening merits brief the next day.

1 The Supreme Court did not direct further submissions
2 from the parties about the effect of the Waiver Declaration.
3 Instead, on January 10, 2011, the Supreme Court issued a brief
4 per curiam order referencing and briefly describing the parties'
5 letter submissions of late November and early December 2010. See
6 Madison County, 131 S. Ct. at 704. The Court did not identify or
7 address the parties' arguments concerning whether the issue of
8 tribal sovereign immunity from suit had become moot. Instead,
9 the Court stated:

10 We vacate the judgment and remand the case to
11 the United States Court of Appeals for the
12 Second Circuit. That court should address,
13 in the first instance, whether to revisit its
14 ruling on sovereign immunity in light of this
15 new factual development, and -- if necessary
16 -- proceed to address other questions in the
17 case consistent with its sovereign immunity
18 ruling.

19 Id.

20 Proceedings on Remand

21 On remand, we directed the parties to provide us with
22 supplemental letter-briefing. The OIN; the Counties; the
23 putative intervenor, Stockbridge; and the State of New York (as
24 amicus curiae) have each made such submissions.

25 **DISCUSSION**

26 I. Standard of Review

27 "We review a district court's grant of summary judgment
28 de novo, construing the evidence in the light most favorable to

1 the non-moving party and drawing all reasonable inferences in its
2 favor." Allianz Ins. Co. v. Lerner, 416 F.3d 109, 113 (2d Cir.
3 2005). "Summary judgment is appropriate where there exists no
4 genuine issue of material fact and, based on the undisputed
5 facts, the moving party is entitled to judgment as a matter of
6 law." 10 Ellicott Square Court Corp. v. Mtn. Valley Indem. Co.,
7 634 F.3d 112, 119 (2d Cir. 2011) (internal quotation marks
8 omitted); see also Fed. R. Civ. P. 56(a).

9 II. The OIN's Claims Based Upon Tribal Sovereign
10 Immunity From Suit and the Nonintercourse Act

11 Our decision in Oneida I affirming the district court's
12 judgments rested solely on our determination that the OIN
13 possessed tribal sovereign immunity from suit. See Oneida I, 605
14 F.3d at 160. Since that decision, the OIN has professed to
15 "waive[], irrevocably and perpetually, its sovereign immunity to
16 enforcement of real property taxation through foreclosure by
17 state, county and local governments within and throughout the
18 United States." Waiver Declaration.

19 In its letter-brief to this Court on remand from the
20 Supreme Court, the OIN represents that its waiver of immunity was
21 "duly enacted" by the OIN's tribal council; that the waiver is
22 "expressly perpetual and irrevocable," meaning that it is "not
23 subject to invalidation" by a future tribal council; and that the
24 waiver "covers all taxes, interest, and penalties held to be
25 lawfully due" to the Counties. OIN's Ltr.-Br. at 4. The OIN has

1 also indicated that it "'consider[s] itself judicially estopped
2 from raising sovereign immunity as a defense to foreclosure
3 actions to enforce state, county, or local real property taxes.'" Id. (brackets in original) (quoting OIN December 2 Letter at 3).
4 Finally, the OIN has "invite[d] the entry of an order reflecting
5 the irrevocability" of its waiver. OIN December 2 Letter at 3.
6

7 In response, the Counties argue that tribal sovereign
8 immunity from suit is still a live issue, inasmuch as the parties
9 continue to disagree about whether the OIN ever possessed, in the
10 first instance, any entitlement to immunity that it could
11 subsequently waive. They also contend that the OIN has not
12 sufficiently disclaimed its authority to re-assert its tribal
13 sovereign immunity from suit in the future. They argue, citing
14 United States v. Government of Virgin Islands, 363 F.3d 276 (3d
15 Cir. 2004), that the "OIN has 'not chang[ed] its substantive
16 stance'" on the question of whether it possesses immunity, but
17 instead has only ceded the argument for the "'purely practical
18 reason[]" of avoiding Supreme Court review. Counties' Ltr.-Br.
19 at 3 (first brackets in original) (quoting Virgin Islands, 363
20 F.3d at 286). The Counties therefore urge us to revisit our
21 immunity analysis from Oneida I and conclude, in light of the
22 Supreme Court's intervening grant of a writ of certiorari, that
23 our prior reasoning must have been incorrect. In the
24 alternative, they ask that we declare that the OIN's waiver has

1 forever barred it from asserting the defense of tribal sovereign
2 immunity from suit in "in rem foreclosure proceedings and all
3 related tax collection proceedings." Id. at 6 (emphasis in
4 original).

5 There may well be, as the Counties urge, remaining
6 disagreements as to whether the OIN possessed tribal sovereign
7 immunity from suit at the time that these cases were before the
8 district court and then on appeal to us in the first instance.
9 But these questions have now become academic. The OIN, which had
10 prevailed on the issue of tribal sovereign immunity from suit
11 before both the district court and this Court, now assures us, as
12 it did the Supreme Court, that it will no longer invoke the
13 doctrine of tribal sovereign immunity from suit as a basis for
14 preventing the Counties from enforcing property taxes through tax
15 sale or foreclosure. See Waiver Declaration. The OIN has thus
16 effectively announced that it has abandoned its argument that it
17 possesses tribal sovereign immunity from suit and, therefore, has
18 indicated that it is no longer seeking declaratory and injunctive
19 relief against the Counties on that basis.

20 Under the circumstances presented here, we accept the
21 OIN's abandonment of its immunity-based claims. Contrary to the
22 Counties' arguments that the Waiver Declaration may not be
23 sufficiently binding, we understand the waiver to be complete,
24 unequivocal, and irrevocable. Neither do we have any reason to

1 think that the OIN is using its waiver as a tactic to overturn an
2 existing unfavorable decision. To the contrary, our decision in
3 Oneida I was in its favor.

4 Moreover, the Counties' concern that the OIN might
5 attempt to revoke its Waiver Declaration is unfounded. The OIN
6 is bound by the doctrine of judicial estoppel. See, e.g., New
7 Hampshire v. Maine, 532 U.S. 742, 749 (2001) ("Where a party
8 assumes a certain position in a legal proceeding, and succeeds in
9 maintaining that position, he may not thereafter . . . assume a
10 contrary position, especially if it be to the prejudice of the
11 party who has acquiesced in the position formerly taken by him."
12 (brackets and internal quotation marks omitted)). As the OIN
13 itself has stated:

14 [E]ven if the Nation's "irrevocabl[e] and
15 perpetual[]" waiver were not sufficient to
16 protect the Counties' rights, the doctrine of
17 judicial estoppel would be. . . . [T]he
18 Nation considers itself judicially estopped
19 from raising sovereign immunity as a defense
20 to foreclosure actions to enforce state,
21 county, or local real property taxes; invites
22 the entry of an order reflecting the
23 irrevocability of its declaration and
24 ordinance; and expressly disclaims any
25 intention ever to revoke its waiver.

26 OIN December 2 Letter at 2-3 (citations and footnote omitted).

27 We take the OIN at its word, and we expect that future courts
28 will as well. Accordingly, the OIN's immunity-based claims are
29 no longer before this Court.

30 We similarly regard the OIN's claims based upon the

1 Nonintercourse Act as having been abandoned on appeal. In its
2 letter-brief, the OIN declares that "[i]n light of [its]
3 representation [that it has waived its tribal sovereign immunity
4 from suit], the Nation no longer invokes the Nonintercourse Act's
5 statutory restrictions on the alienation of Indian land as a
6 defense to tax foreclosures." OIN's Ltr.-Br. at 10. We take the
7 OIN's statement that it "no longer invokes" the Nonintercourse
8 Act as an indication that the OIN has abandoned its claims
9 premised on that statute. As a result, the district court's
10 judgments in the OIN's favor may no longer be sustained on the
11 ground that foreclosure would violate the anti-alienation
12 provisions of the Nonintercourse Act. We therefore need not
13 consider the merits of the Counties' and the State's arguments
14 that the Nonintercourse Act does not bar property-tax enforcement
15 through tax sale or foreclosure.

16 The decision whether to vacate the judgment of the
17 district court in cases where a claim has been abandoned or has
18 become moot on appeal is a discretionary one and "depends on the
19 equities of the case." Russman v. Bd. of Educ., 260 F.3d 114,
20 121 (2d Cir. 2001). But vacatur is common where it is the
21 "unilateral action of the party who prevailed below" that causes
22 a judgment to become unreviewable. U.S. Bancorp Mortg. Co. v.
23 Bonner Mall P'ship, 513 U.S. 18, 25 (1994); accord Brooks v.
24 Travelers Ins. Co., 297 F.3d 167, 172 (2d Cir. 2002); Russman,

1 260 F.3d at 121-22. It has been said that the winning party in
2 the district court should not be able to prevent appellate review
3 of a perhaps-erroneous decision by attempting to render the
4 district court's judgment unappealable. See Penguin Books USA
5 Inc. v. Walsh, 929 F.2d 69, 73 (2d Cir. 1991). In other words,
6 the party aggrieved by a district-court judgment should not be
7 required to "suffer the adverse res judicata effects" of that
8 judgment if the appeal was terminated through no fault of his or
9 her own. Associated Gen. Contractors of Conn., Inc. v. City of
10 New Haven, 41 F.3d 62, 67 (2d Cir. 1994); see also Van Wie v.
11 Pataki, 267 F.3d 109, 115 (2d Cir. 2001); Mfrs. Hanover Trust Co.
12 v. Yanakas, 11 F.3d 381, 383 (2d Cir. 1993).

13 Here, the OIN has voluntarily abandoned its claims
14 based upon the doctrine of tribal sovereign immunity from suit
15 and the Nonintercourse Act. It would therefore be prejudicial to
16 the Counties to leave the district court's judgments in place
17 insofar as they rested upon these grounds. Accordingly, we
18 conclude that the proper course in this instance is to vacate so
19 much of the district court's judgments as rests upon the doctrine
20 of tribal sovereign immunity from suit and the Nonintercourse
21 Act. See, e.g., Arave v. Hoffman, 552 U.S. 117, 118 (2008)
22 (partially vacating judgment after habeas-corpus petitioner, who
23 prevailed before court of appeals, abandoned his ineffective-
24 assistance claim after Supreme Court granted writ of certiorari);

1 City of Cuyahoga Falls v. Buckeye Cmty. Hope Found., 538 U.S.
2 188, 199-200 (2003) (partially vacating judgment after plaintiff,
3 who prevailed before court of appeals, abandoned one of its
4 claims); Arizonans for Official English v. Arizona, 520 U.S. 43,
5 71-72 (1997) (vacating district court judgment in plaintiff's
6 favor where plaintiff had resigned her public-sector employment,
7 out of which her claims arose, while case was pending before
8 court of appeals); see also 13C Charles Alan Wright et al.,
9 Federal Practice & Procedure § 3533.10.1, at 578-79 (3d ed.
10 2008). We also conclude that under these circumstances --
11 because the OIN assures the world at large and us in particular
12 that its Waiver Declaration is irrevocable and subject to the
13 doctrine of judicial estoppel -- those claims must be dismissed
14 with prejudice. See Arave, 552 U.S. at 118-19; Deakins v.
15 Monaghan, 484 U.S. 193, 200-01 (1988). And we also direct the
16 district court, on remand, to include in its amended judgment in
17 each lawsuit that the OIN's waiver of its tribal sovereign
18 immunity from suit is "irrevocable" and subject to the doctrine
19 of judicial estoppel.

20 III. Due Process

21 Having determined that the OIN abandoned two of its
22 claims for relief, we proceed to consider the third rationale
23 supporting the district court's judgments: that the Counties'

1 notices to the OIN of the expiration of its right of redemption
2 failed to comport with federal due-process requirements.¹³

¹³ In its several complaints, the OIN alleged that each County's foreclosure procedures violated both federal and state constitutional due-process standards. In granting summary judgment to the OIN on its due-process claims, the district court did not state whether its rulings rested upon the Fourteenth Amendment to the U.S. Constitution, or Article I, section 6 of the New York Constitution, or both. See Oneida County I, 432 F. Supp. 2d at 289-90 (referencing only "the [OIN's] right to due process"); Madison County I, 401 F. Supp. 2d at 230-31 (same). But the district court relied principally on McCann v. Scaduto, 71 N.Y.2d 164, 519 N.E.2d 309, 524 N.Y.S.2d 398 (1987), a decision in which the New York Court of Appeals held that Nassau County's tax-enforcement procedures "violated the Federal constitutional guarantee of due process of law." Id. at 170 (emphasis added); see also id. at 179 (Simons, J., dissenting). And in the summary-judgment proceedings in the district court, the OIN appeared to frame its due-process argument primarily in terms of federal constitutional standards. It has not relied upon its state-law claims on appeal.

With some exceptions, New York courts have interpreted the due-process guarantees of the New York Constitution and the United States Constitution to be coextensive -- or assumed that they are. See, e.g., Economico v. Village of Pelham, 50 N.Y.2d 120, 124-25, 405 N.E.2d 694, 428 N.Y.S.2d 213 (1980) (appearing to treat state and federal constitutional standards as coextensive for purpose of resolving procedural due process claim), abrogated on other grounds by Prue v. Hunt, 78 N.Y.2d 364, 366, 581 N.E.2d 1052, 575 N.Y.S.2d 806 (1991); Cent. Sav. Bank in City of N.Y. v. City of N.Y., 280 N.Y. 9, 19 N.E.2d 659 (1939) (per curiam); People ex rel. Newcomb v. Metz, 64 A.D.2d 219, 222, 409 N.Y.S.2d 554, 556 (3d Dep't 1978). But see Hernandez v. Robles, 7 N.Y.3d 338, 362, 855 N.E.2d 1, 821 N.Y.S.2d 770 (2006) (R.S. Smith, J., plurality opinion) (citing cases involving criminal defendants or prisoners in which the Court of Appeals has interpreted the state due-process clause to provide greater protections than its federal analogue).

We need not decide, however, whether Article I, section 6 of the New York Constitution provides any greater relief than does the Fourteenth Amendment to the United States Constitution, inasmuch as the OIN has not asserted that it is entitled to any greater due-process protection under state constitutional law than under federal constitutional law. The argument,

1 A. Governing Law

2 Our analysis of procedural-due-process claims
3 ordinarily proceeds in two steps. First, we ask "whether there
4 exists a . . . property interest of which a person has been
5 deprived." Swarthout v. Cooke, 131 S. Ct. 859, 861 (2011). If
6 so, we then "ask whether the procedures followed by the State
7 were constitutionally sufficient." Id.; accord, e.g., Adams v.
8 Suozzi, 517 F.3d 124, 127 (2d Cir. 2008).

9 Property interests "are not created by the
10 Constitution," but "are created and their dimensions are defined
11 by existing rules or understandings that stem from an
12 independent source such as state law." Bd. of Regents v. Roth,
13 408 U.S. 564, 577 (1972); accord O'Connor v. Pierson, 426 F.3d
14 187, 196 (2d Cir. 2005). The Counties do not appear to dispute
15 that the OIN possesses a cognizable property interest under New
16 York law in the right to redeem its property from foreclosure.
17 See Orange County Comm'r of Fin. v. Helseth, 875 N.Y.S.2d 754,
18 760 (N.Y. Sup. Ct. 2009) ("Notice of a right to redeem one's
19 property from the municipality into which title vests following
20 a tax lien foreclosure sale enjoys constitutional procedural due
21 process protection."); cf. In re Pontes, 310 F. Supp. 2d 447,
22 454 n.8 (D.R.I. 2004) ("The right of redemption is a property

irrespective of its plausibility, is therefore forfeited on
appeal. See, e.g., City of N.Y. v. Mickalis Pawn Shop, LLC, 645
F.3d 114, 137 (2d Cir. 2011).

1 interest distinct and separate [under Rhode Island law] from an
2 owner's right of ownership in the underlying property itself.").
3 But cf. Weigner v. City of New York, 852 F.2d 646, 652 (2d Cir.
4 1988) (stating that once a government sends personal notice that
5 a "foreclosure action had been initiated," it is "not required
6 to send additional notices as each step in the foreclosure
7 proceeding [is] completed or when each of the available remedies
8 [is] about to lapse"), cert. denied, 488 U.S. 1005 (1989). We
9 assume, for the purpose of resolving these appeals, that the OIN
10 has a constitutionally protected property interest in its right
11 to redemption from foreclosure.

12 The Fourteenth Amendment to the United States
13 Constitution provides that "[n]o state shall . . . deprive any
14 person of . . . property[] without due process of law." U.S.
15 Const. amend. XIV, § 1. "Before a State may take property and
16 sell it for unpaid taxes, the Due Process Clause of the
17 Fourteenth Amendment requires the government to provide the
18 owner 'notice and opportunity for hearing appropriate to the
19 nature of the case.'" Jones v. Flowers, 547 U.S. 220, 223
20 (2006) (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339
21 U.S. 306, 313 (1950)).

22 The OIN's claims center on the requirement of notice.
23 It is axiomatic that where notice is legally required, the Due
24 Process Clause of the Fourteenth Amendment requires notice that

1 is "'reasonably calculated, under all the circumstances, to
2 apprise interested parties of the pendency of the action and
3 afford them an opportunity to present their objections.'" Jones, 547 U.S. at 226 (quoting Mullane, 339 U.S. at 314).
4 Notice must be of "such nature as reasonably to convey the
5 required information," Mullane, 339 U.S. at 314, and "[t]he
6 means employed must be such as one desirous of actually
7 informing the [recipient] might reasonably adopt to accomplish
8 it," id. at 315. The notice provided also "must afford a
9 reasonable time for those interested to make their appearance."
10 Id. at 314 (citing Roller v. Holly, 176 U.S. 398 (1900)). In
11 assessing the adequacy of a particular form of notice, we must
12 "balanc[e] the 'interest of the State' against 'the individual
13 interest sought to be protected by the Fourteenth Amendment.'" Jones, 547 U.S. at 229 (quoting Mullane, 339 U.S. at 314). But
14 "[i]n the context of a wide variety of proceedings[,] . . . the
15 Supreme Court has consistently held that mailed notice satisfies
16 the requirements of due process." Grievance Comm. for S. Dist.
17 of N.Y. v. Polur, 67 F.3d 3, 6 (2d Cir. 1995) (ellipsis in
18 original; internal quotation marks omitted), cert. denied, 517
19 U.S. 1196 (1996); see also Mullane, 339 U.S. at 313 ("Personal
20 service of written notice . . . is the classic form of notice
21 [that is] always adequate in any type of proceeding.").

1 We have observed that the Fourteenth Amendment
2 "requires as much notice as is practicable to inform a [property
3 owner] of legal proceedings against his property," Brody v.
4 Vill. of Port Chester, 434 F.3d 121, 130 (2d Cir. 2005) (citing
5 Mullane, 339 U.S. at 315), and that "a property owner must be
6 given notice of foreclosure proceedings before foreclosure can
7 occur," Akey v. Clinton County, 375 F.3d 231, 235 (2d Cir.
8 2004); accord Jones, 547 U.S. at 234. But due process requires
9 only that a state take steps reasonably calculated to provide
10 actual notice,¹⁴ not that the notice actually reach the
11 recipient. "Due process does not require that a property owner
12 receive actual notice before the government may take his
13 property." Jones, 547 U.S. at 226; accord Miner v. Clinton
14 County, 541 F.3d 464, 471 (2d Cir. 2008), cert. denied, 129 S.
15 Ct. 1625 (2009).

16 However, although due process does not require actual
17 notice, actual notice satisfies due process -- so long as that

¹⁴ The lexicon employed in this context can be confusing. The term "actual notice" is sometimes used to refer to personal notice sent by mail, as opposed to constructive notice by publication. See, e.g., Weigner, 852 F.2d at 651 n.6; McCann, 71 N.Y.2d at 174. Other times, "actual notice" is used to signify the successful receipt of notice by its intended recipient, as opposed to the act of its sending. See, e.g., Dusenbery v. United States, 534 U.S. 161, 170 n.5 (2002); Baker v. Latham Sparrowbush Assocs., 72 F.3d 246, 254 (2d Cir. 1995). In this opinion, we use the term "actual notice" to denote the successful receipt of notice, and the term "personal notice" to denote the sending of notice by mail to the record owner. Cf. N.Y. Real Prop. Tax Law § 1125 (referring to mailed notice as "personal notice").

1 notice "apprises [a party] of the pendency of the action and
2 affords [it] an opportunity to respond." Baker, 72 F.3d at 254.
3 Indeed, state and federal courts have frequently decided, in
4 cases where a plaintiff received actual notice, that the Due
5 Process Clause was not offended even though the defendant had
6 failed to fulfill all technical notice requirements imposed by
7 statute or rule. See, e.g., United Student Aid Funds, Inc. v.
8 Espinosa, 130 S. Ct. 1367, 1378 (2010); In re Medaglia, 52 F.3d
9 451, 455 (2d Cir. 1995); United States v. One 1987 Jeep
10 Wrangler, 972 F.2d 472, 482 (2d Cir. 1992); Sendel v. Diskin,
11 277 A.D.2d 757, 759, 716 N.Y.S.2d 471, 473 (3d Dep't 2000);
12 Pompe v. City of Yonkers, 179 A.D.2d 628, 629-30, 578 N.Y.S.2d
13 585, 587 (2d Dep't 1992).

14 B. The Counties' Procedures

15 The Counties employ different statutory procedures for
16 property-tax enforcement.

17 1. Madison County. Madison County employs the
18 default tax-enforcement procedure established by Article 11 of
19 the New York Real Property Tax Law (the "RPTL"). The RPTL
20 provides for a two-year, pre-foreclosure redemption period.¹⁵
21 The redemption period starts to run on the "lien date," which

¹⁵ Specifically, RPTL § 1110(1) provides that "[r]eal property subject to a delinquent tax lien may be redeemed by payment to the enforcing officer, on or before the expiration of the redemption period, of the amount of the delinquent tax lien or liens, including all charges authorized by law."

1 is the date on which unpaid taxes and other assessments
2 automatically become a lien against the property. Id. §§ 902,
3 1102(4). If taxes are not paid within the first month after
4 the lien date, interest and penalties begin to accrue. Id.
5 §§ 924, 924-a, 936(2). Ten months after the lien date, a list
6 of delinquent taxes is prepared and filed with the county
7 clerk. Id. § 1122. Twenty-one months after the lien date
8 (i.e., three months before the end of the redemption period),
9 the enforcing authority executes a petition of foreclosure.
10 Id. § 1123(1)-(2). The filing of this petition is accompanied
11 by published notice, id. § 1124(1), as well as personal notice
12 by certified and regular first-class mail to the property
13 owner, id. § 1125(1). These notices must include the last date
14 on which the properties may be redeemed. Id. § 1125(2).
15 Although personalized tax statements are mailed annually to all
16 property owners, see id. § 922, the only personal notice sent
17 to owners which specifically identifies the expiration of the
18 redemption period is the notice sent twenty-one months after
19 the lien date pursuant to RPTL § 1125. See generally Kennedy
20 v. Mossafa, 100 N.Y.2d 1, 6-8, 789 N.E.2d 607, 759 N.Y.S.2d 429
21 (2003) (describing the RPTL tax-foreclosure procedures).

22 In early December 2004, Madison County executed a
23 petition of foreclosure in state court with respect to some
24 ninety-eight parcels of OIN-owned property to enforce overdue

1 taxes owed since the lien date of January 1, 2003. The County
2 mailed personal notice to the OIN on December 8, 2004, and the
3 OIN has not disputed receipt. According to that notice, the
4 specified last day for redemption of the ninety-eight parcels
5 was March 31, 2005. After the Supreme Court issued its decision
6 in Sherrill III on March 29, 2005, Madison County unilaterally
7 extended the OIN's redemption deadline to June 3, 2005, and
8 later to July 14, 2005, providing notice of the extensions to
9 the OIN in each instance. The OIN successfully obtained a
10 preliminary injunction from the district court on July 1, 2005,
11 preventing Madison County from undertaking further tax-
12 enforcement efforts.

13 2. Oneida County. Unlike Madison County, Oneida
14 County has opted out of the RPTL procedures. See, e.g., RPTL
15 § 1104(2) (creating opt-out mechanism). Instead, it employs its
16 own two-step process: first, a tax sale of the property, and
17 second, administrative transfer of title or judicial
18 foreclosure, at the tax-sale purchaser's option. See 1902 Laws
19 of N.Y. ch. 559, §§ 1 to 16, amended by 1918 Laws of N.Y. ch.
20 474, 1920 Laws of N.Y. ch. 111, 1922 Laws of N.Y. ch. 200, 1937
21 Laws of N.Y. ch. 800, 1943 Laws of N.Y. ch. 712, and 1944 Laws
22 of N.Y. ch. 342 (collectively, "Oneida County Tax Law"); see
23 also Aff. of Daniel Yerdon, Deputy Comm'r of Fin., Oneida
24 County, Oneida County II, No. 6:05-CV-945 (N.D.N.Y. Jan. 6,

1 2006), ECF Doc. 23, attach. 40 ("Yerdon Aff."). Taxes come due
2 each year on January 1, but may be paid without penalty or
3 interest through January 31. See Yerdon Aff. ¶ 4. In February
4 of each year, a tax-delinquency notice is sent to the record
5 owner of each delinquent parcel.¹⁶ Id. ¶ 5. On the last
6 business day of December, a tax auction is held at which the
7 County sells all properties for which taxes have been delinquent
8 for six months or more. See Oneida County Tax Law §§ 5-6;
9 Yerdon Aff. ¶ 8. Since 1973, however, the County has had the
10 authority to purchase delinquent properties without first
11 offering them to public bidders. With respect to each of the
12 187 OIN-owned parcels at issue in this litigation, Oneida County
13 exercised its option to purchase the properties without a public
14 sale.

15 Following the tax sale, a post-sale redemption period
16 begins.¹⁷ See Oneida County Tax Law § 8; Yerdon Aff. ¶¶ 11, 15-
17 17. The redemption period, as it has come to be applied, lasts

¹⁶ This delinquency notice is not formally required by the Oneida County Tax Law, but is sent as a matter of standard administrative practice in order to align the County's practices with RPTL § 987. See Yerdon Aff. ¶ 5.

¹⁷ The Oneida County Tax Law provides, in pertinent part and as amended, that "[t]he owner, occupant, or any other person may redeem any real estate sold for taxes . . . at any time within one year after the last day of such sale, by paying to the country treasurer . . . the sum of one dollar plus the sum mentioned in his certificate of sale together with the interest thereon." Oneida County Tax Law § 8; see also Yerdon Aff. ¶ 11.

1 for three years and thirty days.¹⁸ See Yerdon Aff. ¶¶ 15-18.
2 The Oneida County Tax Law dictates that notice of the expiration
3 of the redemption period is to be published "within the three
4 months immediately preceding the expiration." Oneida County Tax
5 Law § 9; see also Yerdon Aff. ¶¶ 12-14. However, as a matter of
6 standard administrative practice,¹⁹ Oneida County also sends by
7 certified mail a "Final Notice Before Redemption" to the record
8 owner thirty days prior to expiration. See Yerdon Aff. ¶ 18.
9 The Final Notice Before Redemption advises the owner that the
10 property was sold at tax sale and provides the final date on
11 which the property can be redeemed. See id. According to the
12 County, the foregoing process was followed with respect to all
13 187 parcels of OIN-owned property at issue.²⁰ See id. ¶¶ 19-21.

¹⁸ The statute itself provides for only a one-year redemption period. See Oneida County Tax Law § 8. However, "[d]espite the expiration of the one-year redemption period, the County does not recognize this event as being the final foreclosure of the right of redemption and, instead, gives the property owner an additional two-year redemption period." Yerdon Aff. ¶ 15. At the end of this three-year period, the County sends the Final Notice Before Redemption, and then affords the owner an additional thirty days to redeem the property. Id. ¶¶ 16-18.

¹⁹ The statute provides that, aside from constructive notice by publication, "[n]o other further or different notice of the expiration of the time to redeem shall be required to be published, served upon or given to any person whatsoever." Oneida County Tax Law § 9.

²⁰ The Final Notices for these 187 parcels were served on the OIN in three batches. First, on June 3, 2005, the County delivered notices to the OIN with regard to 59 parcels, with a redemption expiration date of July 29, 2005. Second, on September 26, 2005, the County delivered notices for 62 parcels with a redemption expiration date of October 29, 2005.

1 C. Analysis

2 The district court concluded that each County's
3 redemption notices failed to comport with due process. We
4 conclude to the contrary that both Counties are entitled to
5 summary judgment on the OIN's due-process claims.

6 In explaining our conclusion, it may be useful to
7 begin by noting what is not at issue. First, the OIN does not
8 contest that each County sent to it personal notice by mail of
9 the expiration of the respective redemption periods. Second,
10 the OIN does not deny that it actually received these notices, a
11 fact that distinguishes this litigation from the much more
12 common due-process challenge in which a plaintiff contests the
13 sufficiency of a notice that failed to reach its intended
14 recipient. See, e.g., Jones, 547 U.S. at 225; Miner, 541 F.3d
15 at 471-73; Akey, 375 F.3d at 235-37. Third, the OIN does not
16 dispute the Counties' assertions that they complied with their
17 respective statutory and administrative requirements for
18 notifying owners of the final date for redemption, including
19 sending personal notice at least three months in advance of

Finally, on October 27, 2005, the County delivered notices for
a final 66 parcels, whose redemption expiration dates are not
in the record.

As to the 59 parcels identified in the first batch of
Final Notices, the OIN and Oneida County reached agreement on
August 1, 2005 to extend the redemption period indefinitely
for those parcels, pending the resolution of this litigation.
In exchange, the OIN made a nonrefundable payment to Oneida
County of \$650,000 as an advance payment of any back taxes
later held to be lawfully due.

1 expiration (as to Madison County) and at least thirty days in
2 advance of expiration (as to Oneida County).²¹ The OIN's
3 argument, therefore, is not that it failed to receive actual
4 notice of the expiration of the redemption periods at the time
5 mandated by each County's tax enforcement procedures, but that
6 the notices provided pursuant to these procedures were not given
7 sufficiently in advance of the respective expiration dates to
8 satisfy federal due-process standards.

9 As the basis for the proposition that the Counties'
10 notices were constitutionally insufficient, the OIN and the
11 district court each have relied principally on McCann. There,
12 the New York Court of Appeals struck down the tax-enforcement
13 procedures of Nassau County, New York, as inconsistent with the
14 Due Process Clause of the Fourteenth Amendment. See McCann, 71
15 N.Y.2d at 177-78. The Nassau County statute provided for a two-
16 step scheme somewhat similar to Oneida County's: first, the sale
17 of a tax lien upon the property, followed by a two-year post-
18 sale redemption period; and second, the transfer of title to the
19 purchaser of the tax lien following the expiration of that
20 redemption period. See Oneida County I, 432 F. Supp. 2d at 290
21 (observing that Oneida County's procedures are "strikingly

²¹ Indeed, Madison County gave notice of the end of the redemption period approximately four months in advance of the original deadline, longer than the three-month period contemplated by RPTL § 1125. And Oneida County gave such notice approximately six weeks in advance of expiration, longer than the thirty-day period that the County normally provides.

1 similar" to those at issue in McCann). Crucially, however,
2 Nassau County did not provide any personal notice to the owner
3 prior to the tax lien sale. It required only that notice of the
4 tax lien sale be "published three times in a newspaper of
5 general circulation." McCann, 71 N.Y.2d at 170. The Court of
6 Appeals, relying on Mennonite Board of Missions v. Adams, 462
7 U.S. 791 (1983), concluded that Nassau County's "failure to
8 provide [property owners] with actual notice of the tax lien
9 sales . . . deprived them of due process of law," id. at 172,
10 because the tax-lien sale itself constituted an event that
11 "substantially affected" the owner's property interest, id. at
12 176; see also, e.g., id. (describing the tax-lien sale as "the
13 event that moves the Sword of Damocles directly over the head of
14 a property owner"). The Court of Appeals thereby overruled one
15 of its previous decisions, Botens v. Aronauer, 32 N.Y.2d 243,
16 298 N.E.2d 73, 344 N.Y.S.2d 892 (1973), appeal dismissed, 414
17 U.S. 1059 (1973), which had held that due-process standards did
18 not require that personal notice of tax-sale proceedings be sent
19 to a property owner, so long as constructive notice by
20 publication was given. See McCann, 71 N.Y.2d at 176.

21 In the course of its decision in McCann, the Court of
22 Appeals also considered Nassau County's argument that its
23 statute was constitutional because, even though the statute did
24 not require personal notice of the tax-lien sale, it did at

1 least provide for personal notice of the expiration of the two-
2 year post-sale redemption period. See id. at 177. Rejecting
3 that argument, the Court of Appeals observed that the statute
4 required such notice only at the point at which three months in
5 the redemption period remained, id. at 177-78, which the court
6 concluded was too late in the overall tax-enforcement process to
7 provide the owner with timely notice of the proceedings. In
8 that connection, the Court of Appeals also took note of an
9 apparent tension between the fact that the statute created a
10 two-year statutory redemption period, but only provided three
11 months' advance notice of its expiration. Id. It reasoned that
12 the statute's failure to provide for notice of the tax lien sale
13 at the first stage of the process also effectively frustrated
14 the "legislative intention" that owners be afforded two years in
15 which to redeem their properties.²² Id.

16 The OIN, latching onto these final steps of the Court
17 of Appeals' analysis, broadly construes McCann as dictating that
18 the Due Process Clause requires that written notice of the date
19 of expiration of a statutory redemption period always be given
20 at the beginning of that period. It argues that McCann "held
21 that it offends due process principles for taxing jurisdictions

²² The Court of Appeals also stated that "[t]he truncated three-month period would in any event be troubling," in light of the substantial amount of interest and penalties that would have accrued in the twenty-one months since the tax sale. McCann, 71 N.Y.2d at 178. But it did not explicitly hold that three months was too short a time to "produce the funds necessary to avoid forfeiture of the title." Id.

1 to truncate statutory redemption periods by serving notice of
2 redemption rights and deadlines that are much shorter than the
3 redemption period." OIN Br. at 27; see also id. at 95
4 ("McCann's holding as to taxation is that, when the Legislature
5 establishes a redemption period of specified duration, due
6 process requires that notice of redemption rights be sent to
7 taxpayers at the outset of that period."). The district court,
8 accepting the OIN's reading of McCann, concluded that, in each
9 of the OIN's lawsuits against the City of Sherrill, Madison
10 County, and Oneida County, the defendants' failures to send
11 notice to the OIN of the date of expiration of the redemption
12 period "at the beginning of the redemption period[] violate[d]
13 the [OIN's] right to due process." Oneida County I, 432 F.
14 Supp. 2d at 290; accord Madison County I, 401 F. Supp. 2d at 230
15 (concluding that because the RPTL provides a two-year redemption
16 period, "in order to comport with due process [Madison] County
17 must have given the Nation notice two years prior to expiration
18 of the redemption period"); Sherrill I, 145 F. Supp. 2d at 257-
19 58 (concluding that the City of Sherrill's foreclosure
20 procedures violated due process for the same reason).

21 We are not persuaded that McCann should be read as the
22 OIN suggests. The decision primarily concerned the
23 constitutionality of a statute that provided a two-step tax-
24 enforcement process, but did not require that any personal

1 notice be given to property owners of the first step in that
2 process, the tax lien sale. See McCann, 71 N.Y.2d at 176-77.
3 To the extent that the Court of Appeals also considered the
4 question of personal notice during the post-sale redemption
5 period, it concluded only that such notice, if given late in the
6 redemption period, does not make up for the fact that no
7 personal notice had been given of the tax-lien sale in the first
8 place. Id. at 177-78. We therefore conclude that the OIN
9 misreads McCann in interpreting that decision to impose a rigid
10 requirement that the commencement of the redemption period, and
11 personal notice of the date of expiration of that period, be
12 perfectly contemporaneous, no matter the surrounding
13 circumstances.

14 However, even if McCann could be read as articulating
15 a requirement that personal notice of the date of expiration of
16 a redemption period be given at the commencement of that period²³

²³ At least one Appellate Division case has relied upon McCann for the proposition that a taxing authority may not provide a notice period significantly shorter in length than the redemption period to which the notice is addressed. In Yagan v. Bernardi, 256 A.D.2d 1225, 684 N.Y.S.2d 117 (4th Dep't 1998), the court ruled that the City of Syracuse failed to afford due process to a property owner because, after expiration of a one-year redemption period (during which no personal notice was given), the City mailed a notice to the owner permitting him only three weeks in which to redeem the property. The Yagan court ruled that the notice "ha[d] the effect of reducing the redemption period from one year to three weeks" and that it therefore "'d[id] not afford a realistic opportunity to produce the funds necessary to avoid forfeiture of the title or sell the encumbered property.'" Id. at 1226, 684 N.Y.S.2d at 119 (quoting McCann, 71 N.Y.2d at 178); see also Lyon v. Estate of Cornell,

1 -- or as suggesting that three months' advance notice of the
2 expiration of a period is constitutionally insufficient --
3 neither we nor the district court are bound by any such holding.
4 McCann rested solely on an interpretation of the Due Process
5 Clause of the Fourteenth Amendment. See id. at 169-70; id. at
6 179 (Simons, J., dissenting). Federal courts are not bound to
7 follow a state court's interpretation of the federal
8 Constitution. See Carvajal v. Artus, 633 F.3d 95, 109 (2d Cir.
9 2011); CFCU Cmty. Credit Union v. Hayward, 552 F.3d 253, 266 (2d
10 Cir. 2009).

269 A.D.2d 737, 738, 703 N.Y.S.2d 325, 326 (4th Dep't 2000)
(relying on Yagan and holding that 18 days' advance notice of a
tax sale was "insufficient as a matter of law to provide the
Estate with sufficient time to present its objections").

Most New York courts that have cited McCann, however, appear
instead to rely on that decision for its principal holding that
due process requires personal notice to a landowner prior to a
tax-lien sale, and that subsequent personal notice of the
expiration of the redemption period alone does not suffice. See,
e.g., Zaccaro ex rel. Zaccaro v. Cahill, 100 N.Y.2d 884, 889, 800
N.E.2d 1096, 768 N.Y.S.2d 730 (2003); Garden Homes Woodlands Co.
v. Town of Dover, 95 N.Y.2d 516, 519, 742 N.E.2d 593, 720
N.Y.S.2d 79 (2000); Szal v. Pearson, 289 A.D.2d 562, 562, 735
N.Y.S.2d 200, 201 (2d Dep't 2001); Meadow Farm Realty Corp., Ltd.
v. Pekich, 251 A.D.2d 634, 635-36, 676 N.Y.S.2d 203, 205 (2d
Dep't 1998); Anthony v. Town of Brookhaven, 190 A.D.2d 21, 26,
596 N.Y.S.2d 459, 461-62 (2d Dep't 1993); T.E.A. Marine Auto.
Corp. v. Scaduto, 181 A.D.2d 776, 779-80, 581 N.Y.S.2d 370, 373-
74 (2d Dep't 1992); Metz v. Dorsey, 146 A.D.2d 845, 846-47, 536
N.Y.S.2d 250, 252 (3d Dep't 1989); LVF Realty Co. v. Harrington,
146 A.D.2d 607, 609, 536 N.Y.S.2d 840, 841-42 (2d Dep't 1989);
see also Quinn v. Wright, 72 A.D.3d 1052, 1053-54, 900 N.Y.S.2d
135, 136-37 (2d Dep't 2010) (citing Szal v. Pearson and
confirming that "[a] notice to redeem that is served after the
tax sale in a manner that provides adequate due process
protections to the property owner does not alleviate a failure to
provide constitutionally-adequate notice of the tax sale").

1 Moreover, we do not regard as persuasive an
2 interpretation of the Due Process Clause that would impose a
3 rigid requirement as to the precise timing with which notice
4 must be given.²⁴ "The due process right to fair notice is
5 a . . . general rule of law that demands a substantial element
6 of judgment and [that] can hardly be implemented mechanically."
7 Ortiz v. N.Y.S. Parole in Bronx, N.Y., 586 F.3d 149, 157 (2d
8 Cir. 2009) (citation and internal quotation marks omitted); see
9 also Gilbert v. Homar, 520 U.S. 924, 930 (1997); Baker, 72 F.3d
10 at 254; In re Drexel Burnham Lambert Grp. Inc., 995 F.2d 1138,
11 1144 (2d Cir. 1993) (observing that due-process notice
12 requirement should not be interpreted "so inflexibly as to make

²⁴ If McCann had indeed intended to hold that perfect temporal alignment is required between the commencement of a redemption period and the notice of that period's date of expiration, the New York courts themselves have not followed that rule. See, e.g., Carney v. Philippon, 1 N.Y.3d 333, 342-43, 806 N.E.2d 131, 136-37, 774 N.Y.S.2d 106, 111-12 (2004) (interpreting the Onondaga County Tax Act as providing a two-year redemption period and requiring six months' advance personal notice of expiration, and holding that that arrangement was "consonant with the requirements of due process"). Moreover, Article 11 of the RPTL -- the statute governing the tax-enforcement process followed by Madison County -- has routinely been held or assumed to be constitutional. See, e.g., Harner v. County of Tioga, 5 N.Y.3d 136, 141, 833 N.E.2d 255, 258, 800 N.Y.S.2d 112, 115 (2005) (no due process violation where County's notice procedures "fully compl[ied]" with Article 11 of the RPTL); Kennedy, 100 N.Y.2d at 9 (observing that "RPTL 1125 essentially encapsulated the two requirements of Mullane and Mennonite" and explicitly upholding its notice procedures as constitutional); see also In re Foreclosure of Tax Liens by County of Schuyler, 83 A.D.3d 1243, 1246, 921 N.Y.S.2d 376, 379 (3d Dep't 2011); In re Foreclosure of Tax Liens by County of Sullivan, 79 A.D.3d 1409, 1411, 912 N.Y.S.2d 786, 788 (3d Dep't 2010); In re Foreclosure of Tax Liens, 72 A.D.3d 1636, 1637, 900 N.Y.S.2d 524, 525 (4th Dep't 2010); In re City of Lockport, 187 A.D.2d 993, 993, 593 N.Y.S.2d 472, 472-73 (4th Dep't 1992).

1 it an 'impractical or impossible obstacle[].'" (quoting Mullane,
2 339 U.S. at 314)(alteration in In re Drexel)).

3 Having considered and rejected the OIN's reading of
4 McCann, we conclude that the OIN has failed to demonstrate that
5 the notice it received from the Counties was constitutionally
6 insufficient. The OIN does not deny that it received actual
7 notice of the date of expiration of the redemption periods and
8 that, in each case, it received such notice well in advance of
9 the deadline -- indeed, further in advance than the Counties'
10 standard practices require. Cf. Goodrich v. Ferris, 214 U.S.
11 71, 81 (1909) ("[O]nly in a clear case will a notice authorized
12 by the legislature be set aside as wholly ineffectual on account
13 of the shortness of the time." (internal quotation marks
14 omitted)).

15 And, critically, the OIN has not proffered any
16 evidence that it suffered injury from the Counties' alleged
17 failure to provide personal notice of the expiration of the
18 redemption period any earlier. As the State of New York argues
19 in its amicus brief, "[t]he OIN has not suggested that its
20 vigorous defense of the foreclosure proceedings was
21 disadvantaged in any particular way by the length of the notice
22 it received." New York State Amicus Br. at 21 n.8.

23 To the contrary, the record reflects that the OIN had
24 sufficient notice of the Counties' tax-enforcement proceedings

1 to apprise it of its right of redemption and to enable it to
2 take appropriate steps to protect its property interests before
3 the redemption period expired. The OIN proved able, among other
4 things, to file a detailed answer in March 2005 to Madison
5 County's state-court petition for foreclosure; to initiate
6 litigation and seek relief in federal court against each County
7 prior to the expiration of the respective redemption deadlines;
8 to redeem properties in a timely fashion when it saw fit to do
9 so; and to negotiate with the Counties to extend redemption
10 deadlines on mutually agreeable terms. And the OIN does not
11 deny that it long has had actual knowledge of the Counties'
12 respective tax-enforcement efforts.

13 The OIN argues that it is immaterial that it had
14 actual knowledge of the Counties' tax-enforcement activities,
15 because it asserts that the redemption periods could not even
16 begin to run until the OIN was first served with personal notice
17 of the date of expiration of the redemption period. We
18 disagree. "Process is not an end in itself," Holcomb v. Lykens,
19 337 F.3d 217, 224 (2d Cir. 2003) (internal quotation marks
20 omitted), and "due process is not offended by requiring a person
21 with actual, timely knowledge of an event that may affect [the
22 person's] right to exercise due diligence and take necessary
23 steps to preserve that right," Medaglia, 52 F.3d at 455. The
24 OIN may not rely upon the dictates of procedural due process as

1 a means of forestalling the Counties' foreclosure efforts
2 because, here, the requirements of the Due Process Clause --
3 notice and an opportunity to respond -- were plainly fulfilled.

4 The OIN has thus failed to establish any genuine
5 dispute as to the fact that it received notice sufficient to
6 "'apprise [it] of the pendency of the action and afford [it] an
7 opportunity to present [its] objections.'" Jones, 547 U.S. at
8 226 (quoting Mullane, 339 U.S. at 314); see also NYCTL 1998-2
9 Trust v. Avila, 29 A.D.3d 965, 966, 815 N.Y.S.2d 725, 727 (2d
10 Dep't 2006) (affirming foreclosure where respondent "failed to
11 demonstrate any prejudice to a substantial right as a result of
12 the alleged deficiency in notice"). The Counties are entitled
13 to summary judgment in their favor on the OIN's due-process
14 claims.

15 We have considered the parties' remaining arguments
16 with respect to the OIN's due-process claims, and we conclude
17 that they are either without merit or no longer require
18 consideration in light of our resolution of these appeals.

19 IV. State Tax Law

20 The final ground for the district court's judgments
21 was its determination that the OIN's properties are exempt from
22 taxation as a matter of New York state law. See Oneida County
23 I, 432 F. Supp. 2d at 290; Madison County I, 401 F. Supp. 2d at
24 231. In reaching that conclusion, the court relied upon New

1 York RPTL § 454, which provides in pertinent part that "[t]he
2 real property in any Indian reservation owned by the Indian
3 nation, tribe or band occupying them shall be exempt from
4 taxation," (emphasis added), and upon New York Indian Law
5 ("NYIL") § 6, which provides that "[n]o taxes shall be assessed,
6 for any purpose whatever, upon any Indian reservation in this
7 state, so long as the land of such reservation shall remain the
8 property of the nation, tribe or band occupying the same"
9 (emphasis added).

10 These state-law claims fell, at the time, within the
11 district court's supplemental jurisdiction. See 28 U.S.C.
12 § 1367(a). Although federal courts may exercise jurisdiction
13 over related state-law claims where an independent basis of
14 subject-matter jurisdiction exists, see, e.g., Monterfiore Med.
15 Ctr. v. Teamsters Local 272, 642 F.3d 321, 332 (2d Cir. 2011),
16 such a court may, for various reasons, nonetheless "decline to
17 exercise supplemental jurisdiction over a claim," 28 U.S.C.
18 § 1367(c). These reasons include that "the claim raises a novel
19 or complex issue of State law," id. § 1367(c)(1); that "the
20 claim substantially predominates over the claim or claims over
21 which the district court has original jurisdiction,"
22 id. § 1367(c)(2); that "the district court has dismissed all
23 claims over which it has original jurisdiction,"
24 id. § 1367(c)(3); or that "exceptional circumstances" exist such

1 that "there are other compelling reasons for declining
2 jurisdiction," id. § 1367(c)(4). "[T]he issue whether
3 [supplemental] jurisdiction has been properly assumed is one
4 which remains open throughout the litigation.'" Rounseville v.
5 Zahl, 13 F.3d 625, 631 (2d Cir. 1994) (quoting United Mine
6 Workers of Am. v. Gibbs, 383 U.S. 715, 727 (1966)); accord Itar-
7 Tass Russian News Agency v. Russian Kurier, Inc., 140 F.3d 442,
8 445 (2d Cir. 1998) (noting that the supplemental-jurisdiction
9 inquiry should be undertaken "at every stage of the litigation"
10 (internal quotation marks omitted)).

11 Although the decision whether to decline to exercise
12 supplemental jurisdiction is "purely discretionary," Carlsbad
13 Tech., Inc. v. HIF Bio, Inc., 129 S. Ct. 1862, 1866 (2009), that
14 discretion is, of course, subject to boundaries. For example,
15 we have repeatedly said that "if a plaintiff's federal claims
16 are dismissed before trial, 'the state law claims should be
17 dismissed as well.'" Brzak v. United Nations, 597 F.3d 107,
18 113-14 (2d Cir. 2010) (quoting Cave v. E. Meadow Union Free Sch.
19 Dist., 514 F.3d 240, 250 (2d Cir. 2008)), cert. denied, 131 S.
20 Ct. 151 (2010).

21 In Carnegie-Mellon University v. Cohill, 484 U.S. 343
22 (1988), the Supreme Court enumerated several factors that courts
23 should weigh in considering whether to exercise supplemental
24 jurisdiction -- "the values of judicial economy, convenience,

1 fairness, and comity," id. at 350 -- and suggested that "in the
2 usual case in which all federal-law claims are eliminated before
3 trial, the balance of [those] factors . . . will point toward
4 declining to exercise jurisdiction over the remaining state-law
5 claims." Id. at 350 n.7; accord Klein & Co. Futures, Inc. v.
6 Bd. of Trade, 464 F.3d 255, 262-63 (2d Cir. 2006), cert.
7 granted, 550 U.S. 956, cert. dismissed, 552 U.S. 1085 (2007);
8 Kolari v. N.Y.-Presbyterian Hosp., 455 F.3d 118, 122 (2d Cir.
9 2006); Valencia ex rel. Franco v. Lee, 316 F.3d 299, 305-06 (2d
10 Cir. 2003) (collecting cases). This Court has concluded that
11 declining to exercise jurisdiction after all original-
12 jurisdiction claims have been dismissed is especially
13 appropriate where the pendent claims present novel or unsettled
14 questions of state law. See, e.g., Cave, 514 F.3d at 250; Klein
15 & Co., 464 F.3d at 263 n.5; Kolari, 455 F.3d at 124 (favoring
16 principle that "state-law claims raising unsettled questions of
17 law" should be dismissed without prejudice under 28 U.S.C.
18 § 1367(c)(3), and collecting cases); Valencia, 316 F.3d at 306-
19 08.

20 Because we have now ordered that the OIN's due process
21 claims be dismissed, there remain no further federal claims
22 supporting the district court's award of injunctive relief. The
23 OIN argues, however, that we should exercise our discretion in
24 favor of retaining supplemental jurisdiction over the OIN's

1 state-law claims even if all of its federal claims are
2 dismissed. In its letter-brief on remand, the OIN urges us to
3 affirm the district court's judgments on the basis that the
4 properties in question constitute lands within "any Indian
5 reservation" for the purposes of RPTL § 454 and NYIL § 6. They
6 rely upon the recent case of Cayuga Indian Nation of New York v.
7 Gould, 14 N.Y.3d 614, 930 N.E.2d 233, 904 N.Y.S.2d 312 (2010),
8 in which the New York Court of Appeals concluded that fee-title
9 lands purchased by the Cayuga Indian Nation fell within the
10 definition of "qualified reservation" for the purposes of two
11 New York cigarette-sales-tax statutes, N.Y. Tax Law §§ 470(16)
12 and 471-e. See Gould, 14 N.Y.3d at 635-46. The New York Court
13 of Appeals decided that "when the Legislature used the term
14 'reservation' in Tax Law § 470(16)(a), it intended to refer to
15 any reservation recognized by the United States government."
16 Id. at 637; see also id. at 638 ("[T]he 'qualified reservation'
17 question distills to whether the convenience store parcels are
18 viewed as reservation property under federal law."). The Court
19 then determined that "the United States government continues to
20 recognize the existence of a Cayuga reservation in New York,"
21 id. at 640, and observed that the Supreme Court's decision in
22 Sherrill III "d[id] not establish that the convenience stores
23 are not located on a reservation," id. at 643. The OIN now
24 argues that by virtue of the Court of Appeals' decision in

1 Gould, the OIN's properties would also necessarily constitute
2 lands on "any Indian reservation" for the purposes of RPTL § 454
3 or NYIL § 6.

4 We do not think that Gould settled the open questions
5 presented by the OIN's remaining state-law claims. Indeed, in
6 Gould itself, the majority expressly reserved the question
7 whether fee-title lands purchased by Indian tribes on the open
8 market would count as "reservation" land for the purposes of
9 RPTL § 454 and NYIL § 6. See id. at 646 (explaining that "terms
10 found in Tax Law § 470(16)(a) will not necessarily be accorded
11 the same meaning when they appear in other statutory contexts,"
12 expressly including NYIL § 6 and RPTL § 454). The Court of
13 Appeals set forth various reasons why the meaning of the term
14 "reservation" could be different under other state statutes.
15 See id. (noting, inter alia, that Tax Law § 470(16)(a) was
16 explicitly patterned after a federal statute; that the state
17 statute was enacted after the Supreme Court's decision in
18 Sherrill III; and that its statutory structure reflected a
19 distinction between an Indian nation's exercise of "governmental
20 power" and the "reservation status" of its land). We therefore
21 cannot say with any certainty or authority how the Court of
22 Appeals would interpret NYIL § 6 or RPTL § 454.

23 We think that at this stage of the litigation, several
24 grounds enumerated by section 1367(c) for declining to exercise

1 supplemental jurisdiction are implicated. First, the OIN's
2 declaratory claims under NYIL § 6 and RPTL § 454 raise "novel
3 [and] complex issue[s] of State law."²⁵ 28 U.S.C. § 1367(c)(1).
4 As the Supreme Court has warned, "[a] federal tribunal risks
5 friction-generating error when it endeavors to construe a novel
6 state Act not yet reviewed by the State's highest court."
7 Arizonans for Official English, 520 U.S. at 79; see also Rivkin
8 v. Century 21 Teran Realty LLC, 494 F.3d 99, 103-04 (2d Cir.
9 2007).

10 Second, almost all of the OIN's federal claims -- with
11 just one narrow exception²⁶ -- have now been dismissed. Cf. 28

²⁵ The OIN and the Counties appear to agree that the term "Indian reservation," as used within NYIL § 6 and RPTL § 454, should be defined by reference to federal law. See, e.g., OIN Br. at 86 (arguing that the state exemptions are "really issues of federal reservation status"); Counties' Reply Ltr.-Br. at 5 (arguing that the New York Court of Appeals would likely "look[] to federal law to resolve the reservation issue"). The district court also appeared to assume, in the course of interpreting those state statutes, that the existence vel non of an "Indian reservation" should be defined by federal law. See Oneida County I, 432 F. Supp. 2d at 290; Madison County I, 401 F. Supp. 2d at 231. Although that interpretation of the state statutes may ultimately be proven correct, we disagree that it is appropriate for us to make such an assumption at this time. It is for the state courts, not us, to determine ultimately and definitively whether a term used in a state statute possesses an autonomous meaning under state law.

²⁶ As we explain below, we conclude that the OIN is entitled under federal common law to a declaration that it is not liable for penalties and interest on taxes that accrued prior to the Supreme Court's March 29, 2005 decision in Sherrill III. That ruling does not, however, entitle the OIN to restrain the Counties from foreclosing on their properties. We do not regard our partial affirmance on the issue of penalties and interest as material to our analysis as to whether supplemental jurisdiction

1 U.S.C. § 1367(c)(3). Even if the existence of one narrow
2 surviving federal claim means that not "all claims over which
3 [the district court] has original jurisdiction" have been
4 dismissed, id. (emphasis added), it has nonetheless become clear
5 that the state-law claims now "substantially predominate[]" in
6 this litigation, id. § 1367(c)(2). "Once it appears that a
7 state claim constitutes the real body of a case, to which the
8 federal claim is only an appendage, the state claim may fairly
9 be dismissed." Gibbs, 383 U.S. at 727; see also, e.g., Dargis
10 v. Sheahan, 526 F.3d 981, 991 (7th Cir. 2008) (survival of one
11 federal due-process claim does not require court to retain
12 jurisdiction over seven state-law claims); Garro v. Connecticut,
13 23 F.3d 734, 737 (2d Cir. 1994) (survival of an "insubstantial
14 federal claim" does not require that jurisdiction be retained
15 over state-law claim).

16 To be sure, the fact that one or more of the grounds
17 for declining to exercise supplemental jurisdiction set forth in
18 section 1367(c) applies does not mean that dismissal is
19 mandated. See 28 U.S.C. § 1367(c) (providing that "[t]he
20 district courts may decline to exercise supplemental
21 jurisdiction" (emphasis added)). For this reason, we have said
22 that "where at least one of the subsection 1367(c) factors is
23 applicable," the court should not decline jurisdiction "unless

may be exercised under section 1367(c).

1 it also determines that [exercising supplemental jurisdiction]
2 would not promote the values . . . [of] economy, convenience,
3 fairness, and comity." Jones v. Ford Motor Credit Co., 358 F.3d
4 205, 214 (2d Cir. 2004) (citation omitted); see also Itar-Tass
5 Russian News Agency, 140 F.3d at 446.

6 Here, though, we conclude -- in light of the
7 "circumstances of the particular case, the nature of the state
8 law claims, the character of the governing state law, and the
9 relationship between the state and federal claims," City of
10 Chicago v. Int'l Coll. of Surgeons, 522 U.S. 156, 173 (1997)
11 (citing Cohill, 484 U.S. at 350) -- that the proper course is to
12 decline to exercise jurisdiction over the OIN's supplemental
13 state-law claims. Certification to the New York Court of
14 Appeals might provide an alternate method for resolving these
15 claims. See 2d Cir. Local R. 27.2; N.Y. Comp. Codes & Regs.
16 tit. 22, § 500.27(a) (2008). However, under these
17 circumstances, we think that it makes more sense for a New York
18 state court to decide the OIN's state-law claims itself based on
19 its understanding of its own law and its own findings of fact,
20 than for us to assist a federal district court to do so
21 indirectly by certification in a case that no longer presents
22 any federal claims. It is also significant that there are
23 already pending state-court proceedings in which the OIN appears
24 to have raised the issue of its claimed state tax-law

1 exemptions.²⁷ We therefore vacate the district court's grant of
2 summary judgment with respect to the OIN's state-law claims, and
3 remand with instructions to dismiss these claims without
4 prejudice to re-filing in state court.

5 We have considered the parties' other arguments as to
6 the legal status of the OIN's reservation under federal or state
7 law, and we conclude that they are either without merit or they
8 are no longer necessary to decide in light of our resolution of
9 these appeals. And because no claims remain in support of the
10 district court's injunctions restraining the Counties from
11 foreclosing on OIN-owned property, nor has the OIN shown that
12 injunctive relief is warranted in any other respect, we vacate
13 those injunctions in their entirety.

14 V. Ancillary Matters

15 A. Penalties and Interest

16 In each of the parallel lawsuits, the district court
17 ruled that by virtue of the OIN's tribal sovereign immunity from
18 suit, the OIN was not liable to pay any penalties or interest on

²⁷ In addition to the pending foreclosure proceedings involving Madison County, the OIN has also initiated various declaratory proceedings in state court under RPTL Article 7 or CPLR Article 78, against Madison County and others, seeking a ruling that its property is exempt from taxation as a matter of state law. It appears that the OIN sought to discontinue that proceeding in preference to this federal lawsuit, but that request was denied. See Oneida Indian Nation of N.Y. v. Pifer, 43 A.D.3d 579, 840 N.Y.S.2d 672 (3d Dep't 2007) (affirming trial court's denial of OIN's motion to discontinue lawsuit without prejudice). It is not clear to us what the status of that proceeding is at this time.

1 back taxes, and it entered injunctive relief accordingly. See
2 Oneida County II, slip op. at 2; Madison County I, 401 F. Supp.
3 2d at 230. But, in light of the OIN's intervening waiver of
4 immunity, we can no longer sustain the district court's
5 injunction restraining the Counties from collecting penalties
6 and interest on the basis of the OIN's tribal sovereign immunity
7 from suit.

8 The OIN maintains, however, that there is an
9 independent basis for restraining the Counties from assessing
10 and collecting penalties and interest on back taxes, at least
11 for the period of time prior to the Supreme Court's decision in
12 Sherrill III issued on March 29, 2005. It contends that it
13 would be inequitable to subject it to liability for penalties
14 and interest for a period of time during which the decisional
15 law -- as reflected, inter alia, by this Court's decision in
16 Sherrill II -- held that the OIN was not liable to pay property
17 taxes at all.

18 The procedural history with respect to the issue of
19 penalties and interest is somewhat convoluted. In seeking
20 summary judgment in the Madison County litigation, the OIN
21 argued that the Counties should be prevented from collecting
22 penalties and interest on two grounds: (1) reasons of equity (as
23 to the pre-Sherrill III period only), and (2) tribal sovereign
24 immunity from suit (as to all periods). In its opposing

1 filings, Madison County did not appear to respond to either
2 argument. The district court, ruling in the OIN's favor,
3 concluded that Madison County had acquiesced to the OIN's
4 argument that it was not liable to pay penalties or interest at
5 all. See Madison County I, 401 F. Supp. 2d at 230.

6 In the Oneida County suit, by contrast, the issue of
7 penalties and interest was contested. In seeking summary
8 judgment, the OIN argued -- just as it had in Madison County --
9 that penalties and interest were barred both by principles of
10 equity (as to the pre-Sherrill III period only) and by the OIN's
11 tribal sovereign immunity from suit (as to all periods). Oneida
12 County responded by arguing that the OIN did not possess tribal
13 immunity from liability for penalties and interest, but it did
14 not squarely address the OIN's separate, equity-based argument.
15 The district court initially ruled in the OIN's favor on the
16 equity theory only, deciding that "[i]t would be inequitable to
17 permit Oneida County to assess interest and penalties for non-
18 payment of taxes during a time when it was the law that the
19 lands were not taxable." Oneida County I, 432 F. Supp. 2d at
20 291; see also Madison County II, 235 F.R.D. at 560 n.1 (noting
21 contrast between district court's rulings on penalties and
22 interest in the Oneida County and Madison County lawsuits).

23 The OIN then filed a post-judgment motion in the
24 Oneida County litigation pursuant to Fed. R. Civ. P. 59

1 requesting that the district court amend its judgment so as to
2 note that penalties and interest were barred not merely for the
3 pre-Sherrill III period, but for all periods, by virtue of the
4 OIN's tribal sovereign immunity from suit. The district court
5 granted that motion and issued an amended judgment restraining
6 Oneida County from assessing or collecting penalties and
7 interest on unpaid taxes generally. See Oneida County II, slip
8 op. at 2. Ultimately, then, the district court's decisions in
9 both Madison County and Oneida County on the matter of penalties
10 and interest rested on the same ground: tribal sovereign
11 immunity from suit.

12 The OIN's positions on appeal with respect to this
13 issue are difficult to reconcile. First, the OIN argued that
14 because the Counties did not adequately brief the question of
15 penalties and interest in their opening brief, the Counties
16 should be held to have forfeited their defense on that issue.
17 See OIN Br. at 58-59. Later, however, the OIN represented to
18 the Supreme Court that "the parties continue to dispute . . .
19 whether penalties and interest may be imposed for periods in
20 which the lands were held to be tax-exempt," and that the issue
21 "remain[s] to be litigated." OIN December 2 Letter at 2. Now,
22 on remand, the OIN has reverted to its previous position,
23 asserting that because the Counties did not challenge on appeal
24 any of the district court's rulings with respect to penalties

1 and interest, they forfeited their right to contest the OIN's
2 entitlement to relief from penalties and interest, including
3 relief on equitable grounds as to the pre-Sherrill III period
4 alone.

5 Despite this apparent inconsistency, we agree with the
6 OIN that the Counties have forfeited their arguments in
7 opposition to the OIN's argument that it is not liable for
8 interest or penalties on taxes or related assessments that
9 accrued prior to March 29, 2005. In the summary-judgment
10 proceedings before the district court, neither County actively
11 opposed the OIN's argument that it was entitled on grounds of
12 equity to a declaration that it did not owe interest or
13 penalties for the pre-Sherrill III period. To the contrary,
14 Oneida County's summary-judgment briefing appeared implicitly to
15 concede the point, even as it disputed the OIN's arguments with
16 respect to the post-March 29, 2005 period. The OIN also
17 correctly observes that in the Counties' opening brief on
18 appeal, they barely mentioned the issue of penalties and
19 interest, only arguing in a footnote that the Supreme Court's
20 decision in Sherrill III "is fairly read to authorize local
21 taxing authorities to collect penalties and interest from OIN."
22 Counties' Br. at 52 n.16. Even after the OIN argued in its
23 responsive brief that "[e]quity also bars imposition of
24 penalties and interest for nonpayment of taxes prior to the

1 Supreme Court's City of Sherrill decision," OIN Br. at 25; see
2 also id. at 62-66, the Counties did not directly respond to that
3 argument, but instead asserted only that the amount of interest
4 and penalties imposed was reasonable, see Counties' Reply Br. at
5 26.

6 Of course, the district court's rulings that the OIN
7 was not liable to pay penalties or interest ultimately rested on
8 the basis of tribal sovereign immunity from suit, not upon
9 principles of equity. Based upon the district court's initial
10 ruling in Oneida County I, however, we understand the district
11 court also to have credited the OIN's argument that it was
12 entitled to be free from paying penalties or interest as to the
13 pre-March 29, 2005 period on equitable grounds. See Oneida
14 County I, 432 F. Supp. 2d at 292 ("Equity precludes the
15 imposition of penalties and interest for taxes unpaid during a
16 time when the properties were tax-exempt under the law."); id.
17 at 290-91 (similar). That ruling was sufficient to put the
18 Counties on notice of the OIN's equitable argument.

19 We conclude that the OIN is entitled to a declaration
20 that it is not liable to pay penalties or interest on taxes or
21 related assessments that accrued prior to the Supreme Court's
22 decision in Sherrill III. Because the OIN has not shown that a
23 permanent injunction is necessary to protect its interests in
24 this respect, we also conclude that this declaratory relief

1 should suffice. Cf. Wooley v. Maynard, 430 U.S. 705, 711 (1977)
2 ("[A] district court can generally protect the interests of a
3 federal plaintiff by entering a declaratory judgment, and
4 therefore the stronger injunctive medicine will be unnecessary."
5 (internal quotation marks omitted)).

6 B. Abstention

7 When this case was originally before us on appeal, the
8 Counties argued that the district court erred as a matter of law
9 by refusing to abstain from jurisdiction on the grounds that
10 federal litigation would impermissibly interfere with state tax
11 administration. The Counties relied upon 28 U.S.C. § 1341,
12 which provides that "[t]he district courts shall not enjoin,
13 suspend or restrain the assessment, levy or collection of any
14 tax under State law where a plain, speedy and efficient remedy
15 may be had in the courts of such State." In our original
16 decision, we rejected this argument, concluding that the Supreme
17 Court has "created an exception to the general rule barring
18 federal interference with state tax administration" for suits
19 brought by Indian tribes that the United States could have
20 brought on a tribe's behalf as trustee. Oneida I, 605 F.3d at
21 160 (internal quotation marks omitted) (citing Moe v.
22 Confederated Salish & Kootenai Tribes of Flathead Reservation,
23 425 U.S. 463, 474-75 (1976)).

24 In their petition for certiorari to the Supreme Court,

1 the Counties did not challenge our ruling with respect to the
2 matter of abstention. Nor do they address abstention in their
3 letter-briefing on remand. But because our decision in Oneida I
4 has been vacated, and because "a district court's determination
5 not to abstain . . . implicates the court's subject matter
6 jurisdiction," Hartford Courant Co. v. Pellegrino, 380 F.3d 83,
7 90 (2d Cir. 2004), we raise the issue sua sponte and affirm the
8 district court's decision not to abstain for substantially the
9 same reasons outlined in our prior panel decision. See Oneida
10 I, 605 F.3d at 160-61.

11 C. Stockbridge's Motions to Intervene

12 On appeal, the putative intervenor, Stockbridge,
13 argues (1) that the district court erred in the Oneida County
14 lawsuit by denying its Rule 24(a) motion to intervene as of
15 right, and (2) that the district court erred in the Madison
16 County lawsuit by refusing to grant leave to Madison County to
17 file a Rule 19 motion to dismiss for failure to join Stockbridge
18 as a party. In its reply letter-brief, Stockbridge asserts that
19 "should this Court conclude that the issue of sovereign immunity
20 is now moot . . . and proceed to address the question whether
21 the [OIN's] land is tax-exempt under New York law, it should
22 reconsider its ruling that Stockbridge does not have an interest
23 in the subject of this litigation." Stockbridge Reply Ltr.-Br.
24 at 4.

1 We need not reconsider our ruling in Oneida I. Here,
2 as in Oneida I, the manner in which we resolve these appeals
3 does not bear upon the question of the disputed boundaries
4 between the OIN's and Stockbridge's respective land claims. See
5 Oneida I, 605 F.3d at 163. Indeed, insofar as our resolution of
6 these appeals does not reach "the question whether the [OIN's]
7 land is tax-exempt under New York law," Stockbridge Reply Ltr.-
8 Br. at 4, but dismisses those claims without prejudice instead,
9 it would appear that Stockbridge concedes that it is unnecessary
10 for us to revisit our prior ruling at this time.

11 Therefore, for substantially the same reasons stated
12 in our decision in Oneida I, see id. at 161-63 & n.9, we affirm
13 the district court's denial of Stockbridge's Rule 24(a)
14 intervention motion in Oneida County and its denial of Madison
15 County's motion to file a Rule 19 motion to dismiss in Madison
16 County.

17 D. Disestablishment or Diminishment

18 Finally, we address the Counties' appeals from the
19 district court's declarations that the ancient Oneida Nation's
20 reservation was not disestablished by the 1838 Treaty of Buffalo
21 Creek. See Oneida County I, 432 F. Supp. 2d at 292 (decreeing
22 that "[the OIN's] reservation was not disestablished"); Madison
23 County I, 401 F. Supp. 2d at 233 (same). In so ruling, the

1 district court effectively dismissed the Counties' counterclaims
2 seeking a declaration to the opposite effect.

3 When this case was previously before us on appeal, we
4 declined to reach the Counties' argument that the OIN's
5 reservation had been disestablished, in light of our conclusion
6 that foreclosure was barred in any event by virtue of the OIN's
7 tribal sovereign immunity from suit. Oneida I, 605 F.3d at 157
8 n.6. We nonetheless observed that the Supreme Court in Sherrill
9 III had "explicitly declined to resolve the question of whether
10 the Oneida reservation had been 'disestablished.'" Id. We
11 concluded that "[o]ur prior holding on this question -- that
12 'the Oneidas' reservation was not disestablished' -- therefore
13 remains the controlling law of this circuit." Id. (citation
14 omitted) (quoting Sherrill II, 337 F.3d at 167).

15 Following our decision in Oneida I, the Counties
16 petitioned for a writ of certiorari to review, inter alia, the
17 question "whether the ancient Oneida reservation in New York was
18 disestablished or diminished." Counties' Cert. Petition at i.
19 Because the Supreme Court vacated our judgment in light of the
20 OIN's professed waiver of immunity and remanded for further
21 proceedings, however, the Court did not have occasion to rule
22 upon the disestablishment question. Nonetheless, relying upon
23 the Supreme Court's intervening grant of certiorari, the

1 Counties urge us to revisit our decision in Sherrill II that the
2 Oneidas' reservation was not disestablished.

3 We decline the Counties' invitation. "This panel is
4 bound by the decisions of prior panels until such time as they
5 are overruled either by an en banc panel of our Court or by the
6 Supreme Court." In re Zarnel, 619 F.3d 156, 168 (2d Cir. 2010)
7 (internal quotation marks omitted). It remains the law of this
8 Circuit that "the Oneidas' reservation was not disestablished,"
9 Sherrill II, 337 F.3d at 167. As we previously observed in
10 Oneida I, the Supreme Court's decision in Sherrill III did not
11 upset that determination. See Oneida I, 605 F.3d at 157 n.6.

12 Nor do we think that the fact that the Supreme Court
13 granted certiorari to review our decision in Oneida I renders
14 our decision in Sherrill II without legal effect. Our Court has
15 spoken on the question of disestablishment. We therefore affirm
16 the dismissal of the Counties' counterclaims.

17 **CONCLUSION**

18 For the foregoing reasons:

19 1. We vacate the district court's judgments to the
20 extent that they granted summary judgment to the OIN on its
21 now-abandoned claims related to: (1) the doctrine of tribal
22 sovereign immunity from suit and (2) the Nonintercourse Act.
23 We remand with instructions to the district court to dismiss
24 those two claims with prejudice. Moreover, as the OIN has

1 suggested, the amended judgments shall reflect this Court's
2 understanding that the OIN's waiver of its tribal sovereign
3 immunity from suit is "irrevocable." OIN December 2 Letter at
4 3.

5 2. We reverse the district court's judgments to the
6 extent that they granted summary judgment on the OIN's claims
7 that the Counties' redemption notices failed to comport with
8 federal or state due-process requirements. We remand with
9 instructions to enter judgment in favor of the Counties on
10 these claims and to dismiss them with prejudice.

11 3. We vacate the district court's judgments to the
12 extent that they granted summary judgment to the OIN on its
13 claims that it is entitled under state law to exemptions from
14 state and local property taxes. We remand with instructions to
15 the district court to decline to exercise supplemental
16 jurisdiction over these claims and to dismiss them without
17 prejudice to their being brought in state court.

18 4. We affirm, but solely as to property taxes and
19 related assessments accruing prior to March 29, 2005, the
20 district court's ruling that the OIN is not liable for payment
21 of penalties or interest, and we conclude that the OIN is
22 entitled to a declaration to that effect.

23 5. We affirm the district court's decisions:
24 declining to abstain from this litigation under 28 U.S.C.

1 § 1341; denying Stockbridge's motions to intervene and denying
2 Madison County's motion for leave to file a Rule 19 motion to
3 dismiss; and dismissing each County's declaratory
4 counterclaims.

5 6. Because no claims remain that would entitle the
6 OIN to injunctive relief barring the Counties from carrying out
7 their respective tax-enforcement procedures, and because the
8 OIN has not shown that injunctive relief is warranted in any
9 other respect, we vacate the district court's injunctions in
10 their entirety.

11 7. We direct the district court to enter an amended
12 judgment in each lawsuit reflecting these rulings.

13 Costs of these proceedings shall be borne by the OIN.