UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION and JOHN DOES 1–20,

Plaintiffs,

-against-

Civil Action No.
5:14-cv-01317
(DNH-ATB)

HOWARD TANNER, Village of Union Springs Code Enforcement Officer, in his Official Capacity; EDWARD TRUFANT, Village of Union Springs Mayor, in his Official Capacity; CHAD HAYDEN, Village of Union Springs Attorney, in his Official Capacity; BOARD OF TRUSTEES OF THE VILLAGE OF UNION SPRINGS, NEW YORK; and THE VILLAGE OF UNION SPRINGS, NEW YORK,

Defendants.

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO JOHN DOE PLAINTIFFS' MOTION FOR RECONSIDERATION AND TO ALTER THE JUDGMENT AND FOR LEAVE TO FILE AN AMENDED COMPLAINT AND IN OPPOSITION TO PLAINTIFF CAYUGA NATION'S MOTION FOR INJUNCTION PENDING APPEAL

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PRELIMINARY STATEMENT

The Nation, or rather in this case a group claiming to represent the Nation, is, if nothing else, a persistent, albeit unsuccessful litigant. Despite the fact that a decade ago this Court ruled in a suit brought by the Nation that the Village of Union Springs was entitled to enforce its ordinances against gambling conducted on property within the Village owned in fee simple by the Nation, *Cayuga Indian Nation of New York v. Village of Union Springs*, 390 F.Supp.2d 203 (N.D.N.Y. 2005), a group of tribal members nevertheless here seeks to claim that they cannot be prosecuted for any violations of those ordinances because 18 U.S.C. § 1166 provides that only Federal authorities can prosecute such violations in "Indian country." They conveniently ignore the decision by the Second Circuit in *United States v. Cook*, 922 F.2d 1026 (2d Cir. 1991), *cert. den.* 500 U.S. 941 (1991), later reaffirmed in *United States v. Markiewicz*, 978 F.2d 786 (2d Cir. 1992), which unequivocally held that New York State authorities enjoy concurrent jurisdiction with the Federal Government to prosecute violations of state gambling laws in "Indian country" located within New York State by virtue of 25 U.S.C. § 232.

In addition, the Plaintiffs ignore the Decision handed down almost exactly one year ago by the U.S. Supreme Court in *Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024 (2014), holding that while tribes may enjoy immunity against enforcement, tribal officers, which Plaintiffs claim to be, do not enjoy such immunity. *Id.* at 2034-2035.

Plaintiffs also ignore the Decision by the U.S. Supreme Court in *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005), just over a decade old, that held that tribes which, as here, purchase fee simple title to land that was part of their historic reservation do not, by virtue of such transactions, reacquire sovereign governmental power over that land, which, in the intervening two

centuries has been governed by the State of New York and its political subdivisions. This is true even if the reservation itself was never "disestablished." *Id.* at 215 n. 9.

Indeed, in *City of Sherrill*, the Supreme Court foresaw and sought by its decision to prevent the exact kind of disruption and confusion Plaintiffs have created here. The Court was concerned that a "checkerboard of alternating state and tribal jurisdiction in New York State – created unilaterally at [the Tribe's] behest – would seriously burden the administration of state and local governments and would adversely affect landowners neighboring tribal patches (internal citations omitted). If [the Tribe] may unilaterally reassert sovereign control and preserve those parcels from the local tax rolls, *little would prevent the Tribe from initiating a new generation of litigation to free the parcels from local zoning or other regulatory controls that protect all landowners in the area*." *Id.* at 220 (emphasis supplied).

Moreover, the group of Plaintiffs claiming here to represent the Nation alleges that enforcement of the ordinances by the Village would represent an intrusion upon the sovereignty of the Nation that would constitute irreparable harm thereby justifying the granting of injunctive relief pending appeal. Even assuming *arguendo* that the Plaintiffs had standing to raise such arguments, the fact is that gambling is a "commercial" enterprise as the U.S. Supreme Court made clear in *Bay Mills*. *Id.* at 2037. Gambling is not an exercise of sovereign power such that halting it would infringe upon the Nation's sovereignty.

For all the foregoing reasons, it is abundantly clear that this case was dead on arrival when it was filed. The chances that the Plaintiffs may ultimately prevail are slim to none. Persistence and tenacity may be admirable virtues for a litigant. Continuing to pursue litigation, however, in the face of certain defeat and to force the Village of Union Springs to expend limited taxpayer dollars to

defend meritless lawsuits crosses over the line from tenacity into the realm of litigation that is both unreasonable and vexatious. Resort by the Plaintiffs to whatever dilatory tactics are available to prolong this litigation via a motion for reconsideration and an injunction pending appeal are a transparent attempt to buy time and to bring the Village to its knees in a war of financial attrition all while they continue to profit from their illegal activities.

Accordingly, the Village asks for attorneys' fees pursuant to 28 U.S.C. § 1927. *See Abbott v. United States*, No. 96-CV-510, 2001 WL 670636, at *1 (N.D.N.Y. April 30, 2001). If, however, the Court is nevertheless inclined to issue any injunction whatsoever that has the effect of permitting Plaintiffs to continue their gambling, such an order should include a term and condition that if this case is ultimately resolved against Plaintiffs and all avenues of appeal have been exhausted, any profits generated while the injunction remained in effect should be disgorged to the Village. It is clear that the Court has the right to impose such conditions as it sees fit when it issues an injunction pending appeal pursuant to Fed R. Civ. P. 62(c).

There is, of course, a way for the Nation – if it can ever get its act together by resolving its internal governance disputes – to try to legally conduct gambling in the Village of Union Springs. The U.S. Supreme Court pointed the way ten years ago in *City of Sherrill*, noting that placing land into trust pursuant to 25 U.S.C. § 465 is the appropriate vehicle for Indians to reacquire sovereign authority. *See City of Sherrill*, 544 U.S. at 420. If such land became trust land, it would qualify for gambling under the Indian Gaming Regulatory Act as it would be "Indian land." *See* 25 U.S.C. § 2703(4)(b).

Unfortunately, the Plaintiffs here are seeking a different route in a vain effort to circumvent the law. Their efforts are clearly and unequivocally illegal and should not be allowed to continue under any circumstances.

SUMMARY OF ARGUMENT

In a last-ditch effort to avoid dismissal on standing grounds, Plaintiffs John Does 1-20 (the "John Doe Plaintiffs") have moved for reconsideration and vacatur of this Court's judgment regarding the John Doe Plaintiffs, and for leave to file an amended complaint. The Plaintiff Cayuga Nation (the "Nation") has simultaneously moved for an injunction pending appeal of this Court's decision and order. Neither motion has any merit.

The proposed amended complaint does nothing to enhance the standing of the John Doe Plaintiffs, who have been identified as members of the Nation's governing council and purported federal representatives of the Nation. The John Doe Plaintiffs do not have standing in any capacity to seek declaratory and injunctive relief against the Village of Union Springs with respect to the Nation's activities on the property. As members of the Nation, they cannot establish injury in fact because any legally protected interest to engage in Class II gaming on Indian lands belongs to the Nation, and not to the individual members of the tribe. Moreover, as this Court correctly observed in granting the Village's motion to dismiss, the Bureau of Indian Affairs ("BIA") did not provide Clint Halftown with the "unilateral authority to initiate lawsuits or enter into new contracts on the Nation's behalf." *See* Dkt. 50 at 9. Accordingly, this Court correctly determined that the John Doe Plaintiffs failed to establish standing under Article III of the Constitution.

The Plaintiffs fare no better on the merits. The legal issues raised by the Plaintiffs' Complaint, including tribal sovereignty, federal preemption, and sovereign immunity, have already

been litigated by the parties and decided in the Defendants' favor. In dismissing the prior action, this Court determined that the Supreme Court's decision in *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), deprived the Nation of its ability to assert sovereignty over the property or immunity from state and local laws and regulations. *Cayuga Indian Nation of New York v. Village of Union Springs*, 390 F.Supp.2d 203 (N.D.N.Y. 2005); *City of Sherrill*, 544 U.S. 197 (2005) (holding that the mere acquisition by an Indian tribe of fee title to its reservation land does not restore its sovereignty). This decision is entitled to *res judicata* effect against the Nation and its members.

Moreover, as the Supreme Court acknowledged last year in *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2035 (2014), the Village is not powerless to enforce its laws and ordinances against gambling at the Lakeside Entertainment venue. Although the Village cannot seek injunctive relief against the Nation, tribal officials are not clothed with sovereign immunity and can be prosecuted for civil and criminal violations of the Village's laws and ordinances. *Bay Mills*, 134 S. Ct. at 2035. Thus, the Village would not be barred from bringing suit against tribal officials and other individuals who are responsible for the illegal activity on the Nation's property. *Id*. ("Michigan could bring suit against tribal officials (rather than the tribe itself) seeking an injunction for, say, gambling without a license."). Relatedly, 18 U.S.C. § 1166 does not preempt the Village from exercising criminal enforcement authority over the property owned by the Nation, because Congress has ceded criminal jurisdiction to the State of New York over offenses committed by or against Indians on Indian reservations. 25 U.S.C. § 232; *U.S. v. Cook*, 922 F.2d 1026 (2d Cir. 1991). Clearly, the Plaintiffs cannot show any possibility of success on appeal or on the merits.

For the reasons discussed above and below, this Court should deny the John Doe Plaintiffs' motion for reconsideration and for leave to file an amended complaint, and the Nation's motion for an injunction pending appeal. However, in the event this Court decides to issue an injunction pending appeal, Defendants respectfully request that any and all proceeds collected by the Nation from the operation of the gaming facility during the pendency of the appeal be disgorged to the Village if and when the case is resolved in the Village's favor. The Plaintiffs should not be allowed to profit from their illegal activity.

Finally, the Village should be awarded attorneys' fees for having to deal with the meritless motions made by Plaintiffs.

ARGUMENT

POINT I

JOHN DOE PLAINTIFFS' MOTION FOR RECONSIDERATION SHOULD BE DENIED

A "clearly erroneous" standard of review applies to motions for reconsideration. "Generally, the prevailing rule in the Northern District 'recognizes only three possible grounds upon which motions for reconsideration may be granted; they are (1) an intervening change in controlling law, (2) the availability of new evidence not previously available, or (3) the need to correct a clear error of law or prevent manifest injustice.'" *S.M. v. Taconic Hills Cent. Sch. Dist.*, 2013 WL 2487171, at *1 (N.D.N.Y. Sept. 10, 2012)(citations omitted). "This is a demanding standard …. The law of the case will be disregarded only when the court has a 'clear conviction of error' with respect to a point of law on which its previous decision was predicated." *Hackert v. First Alert, Inc.*, 2005 WL 6021858, at *1 (N.D.N.Y. 2005)(citation omitted); *see also Sutherland v. New York State Dep't of Law*, 1999 WL 600522, *1 (S.D.N.Y. Aug. 10, 1999)("A [motion for reconsideration]is not a motion to reargue those issues already considered when a party does not like the way the original motion was resolved.").

A. John Doe Plaintiffs Do Not Have Standing to Sue in Their Own Right

The John Doe Plaintiffs argue that reconsideration should be granted to correct a clear error of law or prevent manifest injustice. Despite their erroneous contention that the Defendants "did not contest the standing of the John Doe Plaintiffs" (which is belied by the Defendants' moving papers), the burden was on the Plaintiffs, and not the Defendants, to establish standing to bring a pre-

enforcement challenge against the Village. *See Whitemore v. Arkansas*, 495 U.S. 149 (1990). They failed to do so.

The party invoking federal jurisdiction bears the burden of establishing the three elements of constitutional standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). "First, the plaintiffs must have suffered an 'injury in fact,' – an invasion of a 'legally protected interest' which is (a) concrete and particularized, and (b) actual or imminent, and not conjectural or hypothetical." *Id*. (citations omitted). The second and third requirements demand a showing that, respectively, a causal connection exists between the injury and conduct complained of, and the injury will likely be "redressed by a favorable decision." *Id*. Moreover, "even when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, this Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights and interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

The John Doe Plaintiffs have not established that the Court committed "clear error" in concluding that they do not have standing under Article III of the Constitution. As individual members of the Nation, the John Doe Plaintiffs have no legally protected interest to engage in Class II gaming under the Indian Gaming Regulatory Act ("IGRA"). Any right to do so, if at all, is solely vested in the lawful government of the Nation. *See* 25 USC § 2710(b)(2) ("An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands with such tribe's jurisdiction."); s*ee also Cox Cable Communications, Inc. v. United States*, 992 F.2d 1178, 1182 (11th Cir. 1993) ("No legally cognizable injury arises unless an interest is protected by statute or otherwise.").

Even beyond the realm of Class II gaming, and notwithstanding the fact that the Nation's six-member governing body did not authorize the reopening of Lakeside Entertainment, the John Doe

Plaintiffs do not possess any legal rights to dictate what sort of activities should occur on property owned and controlled by the Nation. *See Willis v. Fordice*, 850 F.Supp. 523, 528 (S.D. Miss. 1994) (holding that a member of the Mississippi Band of Choctaw Indians lacked standing to seek to invalidate his tribe's state-tribal gaming compact and to stop construction of a casino on tribal trust lands), *aff'd*, 55 F.3d 633 (5th Cir. 1995); *see also Hackford v. Babbitt*, 14 F.3d 1457, 1466 (10th Cir. 1994) (holding that prudential limitations bar a plaintiff from claiming an injury to an indivisible tribal asset); *see also James v. Watt*, 716 F.2d 71, 72 (1st Cir.1983) (noting that individual Indians have no cause of action under the Indian Nonintercourse Act because the Nonintercourse Act was designed to protect the land rights only of tribes). Because the John Doe Plaintiffs have not suffered a legally cognizable injury, they do not have standing to challenge any of the Village's laws or ordinances regarding the use and ownership of the Nation's property.[1]

B. Clint Halftown's Purported Status as a Federal Representative Does Not Confer Standing

The John Doe Plaintiffs have not established an independent basis for standing by virtue of the BIA's recognition of Halftown as "the Nation's representative for purposes of administering existing ISDA contracts." *See* Dkt. 45-1 at 2. As a preliminary matter, the Unity Council has filed a timely appeal with the Interior Board of Indian Appeals ("IBIA") of the decision recently issued by the Bureau of Indian Affairs on February 20, 2015. *See* Supplemental Declaration of Joseph J.

[1] Moreover, even if they were able to establish an injury to a legally protected interest (which they cannot do), the alleged injuries are not "certainly impending" to constitute injury in fact for purposes of Article III standing. Although the Village has issued at least three notices of violation to the Nation over the past eighteen months, no enforcement action has been taken to date. *See Clapper v. Amnesty Int'l USA*, 133 S.Ct. 1138, 1147(2013) ("[W]e have repeatedly reiterated that 'threatened injury must be *certainly impending* to constitute injury in fact,' and that '[a]llegations of *possible* future injury' are not sufficient").

Heath in Opposition to Plaintiffs' Motion for Reconsideration ("Heath Decl.") at ¶ 8-9. By operation of law, the February 20th decision is ineffective during the pendency of the appeal.[2] 43 C.F.R. § 4.314; 25 C.F.R. § 2.6. As a result, the decision issued by Director Keel on May 15, 2014 is now "controlling," and it does not recognize Clint Halftown as the federal representative of the Nation.[3] To the contrary, Director Keel stated that the IBIA provided a "crystal clear statement of its view" that "any recognition of Halftown would constitute an improper intrusion into tribal affairs" and that the BIA "does not express any view recognizing either side." *See* Dkt. 33-1 & Ex. C at 3 n.1.

Nonetheless, as this Court correctly determined, the BIA's decision only recognizes Halftown as the federal representative for very limited purposes and does not confer "unilateral authority to initiate lawsuits or enter into new contracts on the Nation's behalf." *See* Dkt. 50 at 9. *See also La Fargue v. Supreme Court of Louisiana*, 634 F.2d 315, 315 (5th Cir. 1981) ("No litigant in the federal courts may appear as a self-designated ombudsman for the rights of others."). Accordingly, the John Doe Plaintiffs have not shown that this Court committed "clear error" in concluding that they failed to meet their burden of establishing standing.

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[2] The John Doe Plaintiffs and their attorneys have previously taken the position that an appeal of a BIA Regional Director's decision stays that decision unless and until the IBIA places it into immediate effect. *See* Health Decl. at ¶ 11.

[3] It appears from Mr. Heath's Declaration that Mr. Halftown is attempting to argue both sides of the same coin in two different judicial fora. Here, Mr. Halftown argues that the February 20, 2015 Decision by the IBIA is "effective" despite 43 C.F.R. § 4.314 and the appeal by the Unity Council from that Decision. Simultaneously, Mr. Halftown is telling the New York State Appellate Division – Fourth Department in a Brief that the August 19, 2011 Decision of the BIA recognizing the Unity Council was never effective because it was appealed. Mr. Halftown cannot have it both ways.

POINT II

PLAINTIFF CAYUGA NATION'S MOTION FOR INJUNCTION PENDING APPEAL SHOULD BE DENIED

When determining whether to issue a stay or injunction pending appeal pursuant to Fed. R. Civ. P. 62(c), the Court must consider: (1) whether the movant will suffer irreparable injury absent an injunction, (2) whether the issuance of the injunction will substantially injure the other party in the proceeding, (3) whether the movant has made a strong showing of likelihood of success on the merits, and (4) where the public interest lies. *See In re World Trade Center Disaster Site Litigation*, 503 F.3d 167 (2d Cir. 2007)(citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *see also Nken v. Holder*, 556 U.S. 418 (2009) (same); see *also Prisco v. I.R.S.*, 2013 WL 6004183 (N.D.N.Y. Nov. 13, 2013)(citing *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002) (stating that "even significant irreparable injury will not support an injunction where plaintiff does not demonstrate the requisite substantial possibility of prevailing"). Plaintiffs have failed to meet this standard.

A. Plaintiffs Have Not Shown Irreparable Harm

The Defendants have already explained why the Nation will not suffer irreparable harm in the absence of an injunction, and respectfully refer the Court to the arguments asserted in Defendants' Memorandum of Law in Support of Their Cross-Motion to Dismiss the Complaint and in Opposition to Plaintiffs' Motion for a Preliminary Injunction. *See* Dkt. 32-6 at 20-24. However, for purposes of the present motion, suffice it to say that any harm the Plaintiffs might suffer in the absence of an injunction will stem from their ill-advised decision to reopen the bingo hall eight years after this Court unequivocally held that the Nation could not assert immunity from the Village's laws and ordinances. Such indirect and self-inflicted harm does not qualify as irreparable. *Pennsylvania*

*v. New Jers*ey, 426 U.S. 660 (1976)(holding that a litigant cannot "be heard to complain about damage inflicted by its own hand."); *Lee v. Christian Coal. of Am., Inc.*, 160 F.Supp.2d 14, 33 (D.D.C. 2012)(holding that a movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted); *Safari Club Int'l v. Salazar*, 852 F.Supp.2d 102, 123 (D.D.C. 2012)(no irreparable harm when plaintiffs could avoid harm). The Plaintiffs have only themselves to blame, and should not be allowed to profit from illegal gambling during the pendency of the appeal.

B. Plaintiffs Have Not Shown Any Likelihood of Success on Appeal or on the Merits

As discussed above, the John Doe Plaintiffs have not shown that they have standing to seek the type of declaratory and injunctive relief requested in the Complaint. Nor have they shown that the lawful government of the Nation properly authorized the filing of the lawsuit, or the reopening of the gaming facility. In fact, as Mr. Halftown previously acknowledged, the Nation's decision making process under Cayuga law and tradition is governed by "consensus," and "consensus" is only achieved "when all of the members of the Nation's council are 'of one mind.'" *George v. E. Reg's Dir.*, BIA, 49 IBIA 164, 166 (2009). Given this concession by Mr. Halftown, there is no need for this Court to have to "delve" into the nuances of Tribal law, as Plaintiffs have argued, because Mr. Halftown is on record as conceding that "consensus" is required before the Nation can act. Here, there has been no showing that the members of the Nation's six-member council are "of one mind."

However, even if the John Doe Plaintiffs are somehow deemed to have standing to sue on behalf of the tribe, they will face insurmountable obstacles on the merits. First, they are barred by the doctrine of *res judicata* because the present claims were fully litigated by the parties and

necessarily decided by the Court in the prior action. *Clark v. Frank*, 960 F.2d 1146 (2d Cir. 1992). In dismissing the complaint and vacating the injunction, this Court, citing *City of Sherrill*, held that the Nation was not entitled to an injunction enjoining the Defendants from interfering with the Nation's use and ownership of the property, or from commencing any actions to apply or enforce the Village's laws and ordinances against the Nation. *Cayuga Indian Nation*, 390 F.Supp.2d at 206. The John Doe Plaintiffs are bound by this judgment.

Second, the Nation's property is not eligible for Class II gaming under IGRA because it is not within the tribe's jurisdiction. 25 U.S.C. § 2703(4); 25 U.S.C. § 2710(b)(1). This result is dictated by the decision in *City of Sherrill*, where the Supreme Court held that the OIN could not "unilaterally revive its ancient sovereignty" over its historic reservation area through open market purchases. *Id*. at 202-03. The Nation, like the OIN, purchased the property on the open market within the boundaries of its former reservation area, and therefore the Supreme Court's decision in *City of Sherrill* applies here with equal force, and deprives the Nation of any ability to assert sovereignty over the property (which is a prerequisite to preemption under federal law). Because the Nation's gaming facility is not authorized by federal law, IGRA does not preempt the application of state and local laws and ordinances prohibiting gaming on the property.

Third, the Nation's sovereign immunity would not prevent the Village from enforcing the 1958 ordinance, or any other anti-gambling law, against the individuals who are responsible for the operation of the illegal bingo hall. In *Bay Mills*, the Supreme Court emphasized that, even though the State lacks the ability to bring an action against a tribe for illegal gaming, "tribal immunity does not bar such a suit for injunctive relief against individuals, including tribal officers, responsible for unlawful conduct." *Bay Mills*, 134 S. Ct. at 2035. *See also Frazier v. Turning Stone Casino*, 254

F.Supp.2d 295, 310 (N.D.N.Y. 2003) ("*Ex parte Young* offers a limited exception to the general principle of state sovereign immunity and has been extended to tribal officials acting in their official capacities … to enjoin conduct that violates federal law."). Thus, the John Doe Plaintiffs cannot take refuge in the tribe's sovereign immunity and can be sued for injunctive relief.

Fourth, 18 U.S.C. § 1166 will not bar the Village from enforcing violations of the 1958 Ordinance on the Nation's property. This is because Congress has granted criminal jurisdiction to the State of New York over offenses committed by or against Indians on Indian reservations. 25 U.S.C. § 232. Significantly, in *U.S. v. Cook*, the Second Circuit rejected the argument that the federal government has exclusive prosecutorial powers pursuant to 18 U.S.C. § 1166, and instead recognized that the "plain language of the statute leads us to conclude that section 232 extended concurrent jurisdiction to the State of New York." *See also U.S. v. Markiewicz*, 978 F.2d 786 (2d Cir. 1992).[4]

Based on the foregoing, the Plaintiffs cannot make any showing, let alone a strong showing, of success on the merits.

C. The Village Will Continue to Suffer Substantial Injury if the Injunction is Granted

The Plaintiffs claim that the "facility's ongoing operation has caused no harm at all." That could not be further from the truth. As Defendants previously advised the Court, the reopening of the gaming facility has given rise to several episodes of violence and lawlessness on property owned by the Nation. As rival factions have competed for control of the Nation's businesses, the

[4] It should also be noted that Section 1166 only has preemptive effect if the land is Indian country within the meaning of 18 U.S.C. § 1151, and the Supreme Court's decision in *City of Sherrill* calls into question the Indian country status of the property.

surrounding community has been forced to endure police intervention, road closures and hospitalizations. *See* Dkt. 32-5 at ¶¶ 11-17. Amidst all of the violence, local residents fear for the safety of their children, since the bingo hall is located in close proximity to a local school. *See id*. at ¶ 14. The disservice to the public interest could not be more clear-cut. Thus, this Court should deny the Plaintiff's request to preserve a status quo that violates the law and threatens the safety and welfare of the community.

Moreover, as this Court held in 2005, "The avoidance of complying with local zoning and land use laws" – which is exactly what Plaintiffs seek here – "is even more disruptive [than avoidance of taxation]." *Cayuga Indian Nation v. Village of Union Springs*, 390 F.Supp.2d 203, *citing City of Sherrill v. Oneida Indian Nation*, 125 S.Ct. at 1493, n. 13. The U.S. Supreme Court has, therefore, already rejected the argument made here by Plaintiffs that allowing violations of zoning ordinances to continue would do no harm to the Village.

CONCLUSION

For the foregoing reasons, the John Doe Plaintiffs' motion for reconsideration, to alter the judgment and for leave to file an amended complaint should be denied. In addition, the Plaintiff Cayuga Nation's motion for an injunction pending appeal should be denied. Finally, Defendants should be awarded attorneys' fees.

In the event, however, that this Court should grant injunctive relief pending appeal, which Defendants hope will not be the case, any such relief should be on the condition that if this case is ultimately resolved against Plaintiffs, any and all profits generated by the continuation of gambling in the intervening time should be disgorged and turned over to the Village.

Dated: Albany, New York
May 29, 2015

Respectfully submitted,

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