Submitted by:
CAROL E. HECKMAN, ESQ.

APL-2017-00029
Appellate Division Docket No. CA 15-01764
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Court of Appeals
of the
State of New York

ERIC WHITE and NATIVE OUTLET,

Plaintiffs-Appellants,

– against –

ERIC T. SCHNEIDERMAN, NEW YORK STATE ATTORNEY GENERAL, in his official capacity; and THOMAS H. MATTOX, COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, in his official capacity,

Defendants-Respondents.

AMICUS BRIEF ON BEHALF OF SENECA NATION OF INDIANS, SAINT REGIS MOHAWK TRIBE AND SHINNECOCK INDIAN NATION

LIPPES MATHIAS WEXLER FRIEDMAN LLP
Carol E. Heckman, Esq.
Thomas J. Gaffney, Esq.
Attorneys for Seneca Nation of Indians,
Saint Regis Mohawk Tribe and
Shinnecock Indian Nation
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
Tel.: (716) 853-5100
Fax: (716) 853-5199

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INTRODUCTION AND STATEMENT OF INTEREST

The Seneca Nation of Indians ("Seneca Nation"), Saint Regis Mohawk Tribe ("Saint Regis Mohawk") and Shinnecock Indian Nation ("Shinnecock Nation") (collectively "the Nations") respectfully submit their brief *amicus curiae* in support of the Appellant Brief submitted by Eric White and Native Outlet (the "White Brief"). The Seneca Nation is a federally recognized Indian Nation with sovereign territories[1] within the State of New York. Likewise, the Saint Regis Mohawk is a federally recognized Indian Nation with its sovereign reservation located in both New York State and Canada. The Shinnecock Nation is also a federally recognized Indian Nation with its sovereign reservation located in New York State. The Nations have a strong interest in the interpretation and application of laws such as Indian Law § 6 that limit taxation on Indian reservations. The Nations also have a unique understanding of the history and purpose of Indian Law § 6, as well as the rules of statutory construction that apply to laws affecting Indian Nations. In cases such as this, the Courts have routinely granted permission to

[1] The term "Territories" refers to the three Indian Reservations governed by the Seneca Nation (Cattaraugus, Alleghany, and Oil Spring territories), as well as the Restricted Fee land owned by the Seneca Nation at Buffalo Creek and Niagara Falls.

intervene to Indian Nations in recognition of their unique perspective and understanding of applicable law. *See Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 170 (1989).

In addition, the Nations exercise comprehensive regulatory and law enforcement jurisdiction over the tobacco economies in their respective territories in New York. This economy represents a considered use by the Nations of their lands for their members' benefit. The Court's determination will affect the Nations' tribal sovereignty by defining the balance of regulatory authority over each Nation's tobacco economy.

This case is not just about tobacco, however. The Court's interpretation of Indian Law § 6 also affects the ability of the State to impose taxes on *any* Indian retailer located within the Nations' territories. Should the Court accept the State's narrow reading of the tax prohibition contained in Indian Law § 6, each Nations' entire economy may become vulnerable to additional state taxation.

Accordingly, in addition to offering its "assistance to the Court" pursuant to 22 N.Y.C.R.R 500.23(a)(4)(iii), the Nations also submit this brief to protect their own sovereign interests. The Nations' unique information and familiarity with the arguments before the Court will

assist the Court's consideration of the conflict between Indian Law § 6 and Tax Law § 471.

The White Brief asserts correctly that the Appellate Division, Fourth Department, erred in interpreting too narrowly Indian Law § 6's clear prohibition against assessing taxes "upon any Indian reservation in this state." The unambiguous language of this statute demonstrates that it is meant to restrict the State's ability to impose *any* tax on an Indian Reservation, not just real property taxes. Even if the Court finds that the statute is ambiguous, it must interpret the statute in a light most favorable to the Indian Nations, and construe the statute as restricting the State's ability to impose any sort of taxation on Indian Reservations.

The Seneca Nation, Saint Regis Mohawk, and Shinnecock Nation respectfully join Mr. White's request insofar as he seeks a reversal of the Appellate Division' declaration "that Tax Law § 471 is not inconsistent with Indian Law § 6."

RELEVANT STATUTES

Indian Law § 6

Indian Law § 6 states that:

> [n]o taxes shall be assessed, for any purpose whatever, upon any Indian reservation in this state, so long as

> the land of such reservation shall remain the property of the nation, tribe or band occupying the same.

Tax Law § 471

Tax Law § 471 declares that:

> There is hereby imposed and shall be paid a tax on all cigarettes possessed in the state by any person for sale * * * * The tax imposed by this section is imposed on all cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe and to non-Indians and evidence of such tax shall be by means of an affixed cigarette tax stamp.

ARGUMENT

The Seneca Nation, Saint Regis Mohawk, and Shinnecock Nation join the White Brief on at least one important point of law. The Appellate Division erred, *inter alia*, in declaring that "Tax Law § 471 is not inconsistent with Indian Law § 6." This finding was mistaken for three independent reasons. First, the lower court ignored a clearly written, unambiguous statute drafted for the benefit and protection of Indian nations and members in this State. Reflecting the treaty protections afforded to Indian nations within the State, the New York State Legislature unambiguously created a restriction on any state taxation within the external boundaries of Indian reservations, not just on real property taxes.

Second, the Appellate Division did worse than ignore the plain language of Indian Law § 6; it also ignored the other provisions passed at the very same time. As shown below, in the series of Indian Laws passed in 1909, the New York Legislature consistently used the term "land" or "lands" to refer to real property, while reserving the term "upon … reservation" to refer to the jurisdictional boundaries of a reservation. If there were any doubt as to the plain meaning of the statute, and we submit there is none, this consistent juxtaposition of the two phrases cements Appellant's view that Indian Law Section 6 prohibits taxation not just on reservation lands but also on any activity occurring on an Indian reservation.

Finally, even if the statute were ambiguous, and we submit it is not, courts must liberally construe statutes passed for the benefit of Indian nations or communities, with ambiguities interpreted to their benefit. *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985) (rejecting State of Montana's attempt to tax Native American royalty income from oil and gas leases); *see also Three Affiliated Tribes of Fort Berthold Reservation v. World Engineering, P.C.*, 467 U.S. 138, 149 (1984) ("it is a settled principle of statutory construction that statutes passed for the

benefit of dependent Indian tribes are to be liberally construed, with doubtful expressions being resolved in favor of the Indians."); *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 269 (1992). This has been so for a hundred years. *See Alaska Pacific Fisheries Co. v. U.S.*, 248 U.S. 78, 89 (1918) (interpreting broadly the geographic scope of the Metlakahtla reservation created by government statute so as to afford Native Americans the greatest possible benefit under the statute). The White Brief asserts correctly that the Appellate Division ignored this well-settled canon of construction by narrowly construing Indian Law § 6.

Accordingly, this Court should reverse the decision of the Appellate Division.

I. NEITHER THE U.S. SUPREME COURT NOR THE COURT OF APPEALS HAS ADDRESSED WHETHER INDIAN LAW § 6 BARS TAXATION OF CIGARETTE SALES ON INDIAN RESERVATIONS.

The Appellate Division and State both suggest that the issue of whether Indian Law § 6 bars state taxation of conduct occurring on Indian Reservation is settled law.[2] This is simply not true. The full

[2] "Thus, plaintiffs' claim that Indian Law § 6 bars anything other than taxes on reservation real property has already been universally rejected, including by this Court." (Brief for Defendants-Respondents, pgs 7-8).

scope of Indian Law § 6 has only been analyzed by the courts below, making this a novel issue for the Court of Appeals to determine.

The extent of the limitation created by Indian Law § 6 has been considered by the Appellate Division *only* two times. First, in *Snyder v. Wetzler*, 193 A.D.2d 329 (3rd Dept. 1993), the Third Department found that Indian Law § 6 "relates solely to the exemption of reservation *lands* from taxation." Although the case was appealed to this Court, this Court did not consider the scope of Indian Law § 6 because the Indian retailer failed to preserve his Indian Law § 6 arguments for appeal. *Snyder v. Wetzler*, 84 N.Y.2d 941, 942 (1994) ("To the extent plaintiff contends that the State tax statutes at issue violate either the Supremacy Clause or New York law, his arguments are unpreserved and cannot be considered on this appeal.").

Indian Law § 6 was next addressed in *Matter of New York State Dept. of Taxation & Fin. v. Bramhall*, 235 A.D.2d 75 (4th Dept. 1997), *appeal dismissed* 91 N.Y.2d 849 (1997), where the Appellate Division summarily determined, without examination, that Indian Law § 6 barred "only the imposition of a tax on reservation land," relying on the

analysis conducted by the Appellate Division in *Snyder*. The case was not accepted on appeal.

The cigarette tax cases considered by the United States Supreme Court never addressed whether Indian Law § 6 applied, nor has the issue of the statute's restriction ever been raised in front of that Court. The application of Indian Law § 6 to non-property taxes on Indian Reservations has therefore never been considered by the United States Supreme Court. As a result, those United States Supreme Court cases allowing state cigarette taxes on Indian Reservations should not be considered as precedents for this case and do not preclude the result urged herein.

Consequently, whether Indian Law § 6 precludes state taxation on any conduct within Indian reservations, not just on reservation property, is a completely novel issue for this Court.

II. THE MEANING OF INDIAN LAW § 6 IS CLEAR ON ITS FACE – THE STATE IS NOT PERMITTED TO IMPOSE ANY TAX ON THE INDIAN RESERVATIONS WITHIN THE STATE.

In 1909 – during an era in which there was little economic activity on Indian Reservations – the New York State Legislature codified a

restriction on the State's ability to impose taxes on Indian Reservations within the State. The statute therefore created a limit on the State's taxing authority that went beyond the common law limit to the State's jurisdiction arising out of the Indian Commerce Clause. That statute, Indian Law § 6, states that:

> [n]o taxes shall be assessed, for any purpose whatever*, upon any Indian reservation* in this state, so long as the land of such reservation shall remain the property of the nation, tribe or band occupying the same.

(emphasis added). There is nothing ambiguous about this language – the State is not permitted to assess taxes of any kind within the territories of Indian Nations in the State. "[W]hen the words of a statute have a definite and precise meaning, such meaning cannot be extended or restricted by conjecture, or under the guise or pretext of interpretation." *Mushlitt v. Silverman*, 50 N.Y. 360, 361-362 (1872). "It is not allowable to interpret that which has no need of interpretation." *Id.; see also Citizens Against Casino Gambling in Erie Cty v. Chaudhuri*, 802 F.2d 267, 287 (2d Cir. 2015) ("When the words of a statute are unambiguous, . . . judicial inquiry is complete.").

The interpretation of Indian Law § 6 advanced by the State ignores the importance of the word "reservation" in the statute.

Critically, Indian law does not prohibit taxes on "Indian property." It prevents taxes "upon any Indian reservation." The term "Indian reservation" is not synonymous with Indian-owned property. Rather, it refers to the jurisdictional boundaries of a specific Indian tribe. *See Montana v. United States,* 450 U.S. 544 (1981) (discussing the distinction between land "held or controlled by Indians" and all lands "within the boundaries of an Indian reservation"). The plain meaning of the tax restriction uses a term that refers to a jurisdictional boundary rather than to specific property, and the phrase "upon any Indian reservation" necessarily refers to any tax that occurs within that jurisdiction. Therefore, the first clause of Indian Law § 6 ("No taxes shall be assessed for any purpose whatever, upon any Indian reservation in this state, . . .") refers to the scope of the tax restriction, whereas the second clause of the statute (". . . so long as the land of such reservation shall remain the property of the nation, tribe or band occupying the same") refers to the temporal limitation of the restriction.

The State's attempt to obscure the plain meaning of the statute is belied by the fact that the State's brief fails at any point to acknowledge that the federally-recognized New York tribes are sovereign nations with

certain exclusive jurisdictional rights independent of the State. Of course, the sovereign status of the Seneca Nation, Saint Regis Mohawk and Shinnecock Nation (like other federally-recognized Indian tribes) is relevant to the interpretation of the plain language of this statute. Unlike typical real property owners, Indian nations can be property owners *and* governmental authorities asserting jurisdiction within defined territory. That difference is critical here, where the statute itself draws a distinction between jurisdictional scope ("upon an Indian reservation") and property ownership ("so along as the land of such reservation shall remain the property . . .). A plain language reading of this statute can therefore draw only one conclusion: The Legislature meant to create such a distinction, prohibiting any taxes within the jurisdictional limits of Indian reservation located in the State so long as the Indian Nation, as a property owner, maintained ownership of its territory.

The Nations have governed their land in accordance with this principle, with the expectation that they are the only taxing authority outside the federal government within the confines of their Territories. The State respected its self-created jurisdictional limit, and refrained from imposing taxes within Indian Reservations, allowing Indian

retailers to transact business freely as guaranteed by Indian Law § 6. The State's respect for this limitation also allowed Indian Nations to impose their own taxes without putting their retailers at an economic disadvantage – a function that is fundamental to each Indian Nation's right to self-govern.

The State also argues that the title of Indian Law § 6 aids in the interpretation of the statute. This is improper: "The title of a statute may be resorted to as an aid in the ascertainment of the legislative intent *only in case of ambiguity in meaning*, and it may not alter or limit the effect of unambiguous language in the body of the statute itself." N.Y. Stat. Law § 123 (emphasis added). The State argues that Indian Law § 6 is unambiguous based on the plain language of the statute. Under this logic, the Court is required to disregard the title of the statute.

Given this unambiguous prohibition against assessing any taxes "for any purpose whatever upon any Indian reservation in this state," Tax Law § 471 is clearly inconsistent with Indian Law § 6 on its face. The Appellate Division thus erred in finding these two statutes to be consistent.

III. NEW YORK STATE'S INDIAN LAW STATUTES INDICATE THE PHRASE "UPON . . . RESERVATION" TO REFER TO JURISDICTIONAL BOUNDARIES, NOT REAL PROPERTY.

Not only did the Court below err in failing to recognize the plain meaning of Indian Law § 6, but its interpretation ignores other New York statutes passed at the very same time. The States argument hinges on its narrow interpretation of the phrase "upon any Indian reservation." However, an examination of this phrase in the context of the other Indian law statutes demonstrates that this phrase is meant to apply broadly to any activity that occurs within an Indian reservation. A similar conclusion follows from subsequently enacted Indian law statutes.

A. The 1909 Indian Law Statutes

The New York State Legislature of 1909 passed a number of other Indian Law statutes in conjunction with Indian Law § 6. Like the distinction in terminology used in Indian Law § 6 discussed above, the other Indian Law statutes show that the State legislature was cognizant of the distinction between real property located on Indian Reservations, as opposed to conduct that occurred "upon any Indian Reservation." When the State legislature wanted to refer to real

property on an Indian Reservation, they used specific language including the word "land":

- Indian Law § 8: restricts the operation of a junkyard "*upon any lands owned or occupied* by any nation, tribe or band of Indians. . . ." (passed in 1909).
- Indian Law § 9: contemplating the Seneca Nation's ability to grant a written permit to non-Seneca Indians to "*reside upon the tribal lands* thereof. . ." and requiring the Seneca Nation to "describe the boundaries of *the land* permitted to be occupied. . . ." (passed in 1909).
- Indian Law § 23: voiding any contract with the Onondaga Indians for timber "*on the tribal lands of such nation . . . .*" (passed in 1909).
- Indian Law § 55: describing the common ownership of *"[a]ll lands* on either the Allegany, Cattaraugus or Tonawanda reservations. . . ." (passed in 1909).
- Indian Law § 84: granting the Tonawanda nation the right to "by lease give the right to explore *land located upon the Tonawanda reservation* and extract minerals, oil or natural gas . . . ." (passed in 1909)
- Indian Law § 87: describing the eviction notice for an Indian occupying "any of *the common lands of his nation*" without obtaining an allotment thereof. (passed in 1909).
- Indian Law § 88: describing the rights of "any Indians *residing upon any cultivated lands* of such reservation which shall have been entered and described in the clerk's book of records. . ." to file an action for encroachment by other Indians on such lands. (passed in 1909).
- Indian Law § 96: describing the right to sell timber for "[a]ny Indian having *tribal lands allotted to him* by the chiefs. . . ." (passed in 1909).

(emphasis added).

In contrast, where the 1909 New York State Legislature wanted to refer to jurisdictional boundaries, as opposed to reservation lands, it used

the term "upon . . . reservation." In addition to using this phraseology in Indian Law § 6, the Legislature also used it to define the jurisdictional boundaries in the following Indian law statute passed in 1909:

- Indian Law § 46: defining the Peacemakers' "authority to hear and determine all matters, disputes and controversies between any Indians residing *upon such reservation*." (passed in 1909) (emphasis added).

Had the State Legislature wished for the tax restriction in the first part of Indian Law § 6 to apply solely to real property located on Indian Reservations, it would have used the same type of term "lands" or "property" like it did in the other Indian Law statutes passed simultaneously, and like it did in the temporal restriction created by the second clause of Indian Law § 6. Reading these provisions together, as it must, the Court should not read the words "lands" or "property" into the tax restriction in the first clause of Indian Law § 6. *Palmer v. Spaulding*, 299 N.Y. 368, 372 (1949) ("It is a strong thing so to read into a statute words which are not there and, in the absence of a clear necessity, it is a wrong thing to do.")

Instead, this Court should assume that the Legislature was careful with its wording, and meant to codify Indian Law § 6 consistent with the rest of the Indian Law statutes. *See Bets v. Horr*, 276 N.Y. 83,

88 (1937) ("The intent and purpose of the legislative commands must be found from the statutes relating to the same general subject-matter taken as a whole."); *Rankin on Behalf of Bd. Of Ed. Of City of New York v. Shanker*, 23 N.Y.2d 111, 114 (1968) (finding that courts should "look to the entire statute, its legislative history and the statutes of which it is made a part."). Across those statutes, a clear pattern emerges: where the Legislature used the phrase "upon . . . reservation," it was not talking about real property, but instead was describing certain jurisdictional limits. This means that Indian Law § 6 does not describe the state limitation of taxes on real property only, but instead restricts the imposition of "any tax, for any purpose whatever," within the jurisdiction defined as each respective Indian reservation.

B. Subsequent New York Indian Law Statutes

In addition to the 1909 legislation, subsequent Indian law statutes passed in New York use the phrase "upon . . . reservation" as referring to jurisdictional boundaries. For example, in 1969, the Legislature passed Indian Law § 18, which granted the Seneca Nation the right to "establish fire corporations to provide fire protection and related services *upon the Seneca Indian reservations*" (emphasis added) –

referring to jurisdictional boundaries. The term "upon . . . reservation" was again reaffirmed as referring to jurisdictional boundaries in Indian Law § 114, passed in 2005, which provides that upon application from the St. Regis Mohawk tribal council, the state police may assign a police officer "for the preservation of order and of the public peace *upon the St. Regis Mohawk tribal reservation* . . . ." Indian Law § 114(2) (emphasis added).

The Legislature's continued use of this phrasing to refer to jurisdictional boundaries adds weight to the interpretation of Indian Law § 6 as addressing all taxation within a certain boundary. *See* N.Y. Stat. Law § 75 ("The construction of a statute by the Legislature, as indicated by the language of later enactments, is entitled to consideration as an aid in the construction of the statute, but is not generally regarded as controlling.").

C. <u>Other States and Courts Use the Phrase "Upon a[ny] Indian Reservation" to Refer to Conduct Occurring Within Indian Reservations.</u>

Elsewhere, legislatures have used the phrase "upon a[ny] Indian reservation" to refer not only to the real property within the reservation boundaries, but also to activity that occurs within the reservation. For

example, the South Dakota Legislature divested its criminal jurisdiction within Indian reservations: "There is hereby relinquished and given to the United States of America and the officers and courts thereof exclusive jurisdiction and authority to arrest, prosecute, convict and punish all persons whomsoever who shall, *upon any Indian reservation* within the state of South Dakota, commit any act in violation of the penal laws of the United States." *Kills Plenty v. United States*, 133 F.2d 292, 294 (1943) (citing Chap. 106, Laws of South Dakota 1901) (emphasis added).

The United States Supreme Court has also reflected this understanding of the phrase "upon any Indian reservation," using it within the context of activity that occurs within Indian Country. *See Central Machinery Co. v. Arizona Tax Comm'n*, 448 U.S. 160, 172 (1980) (Powell, J., dissenting in part and concurring in part) (discussing a C.F.R. which controls business licenses, and requires a bonded principal "who must habitually reside "upon the reservation");*United States v. Shoshone Tribe*, 304 U.S. 111 (1938) (discussing the history of the Shoshone Tribe living "upon the reservation"); *United States v. Ramsey*, 271 U.S. 467, 468 (1926) (discussing federal criminal

jurisdiction over a murder committed "in the Indian Country and in and upon the reservation"); *Donnelly v. United States*, 228 U.S. 243 (1913) (discussing jurisdiction "to punish the plaintiff in error for the murder of an Indian upon the reservation") (emphasis added).

Lower federal courts and states courts have confirmed the use of the phrase "upon . . . a reservation" to refer not only to real property, but also conduct taking place within the reservation. *See, e.g. In re Holy-Elk-Face,* 104 N.W.2d 308, 310 (N.D. 1960) (discussing whether certain Indians reside "upon any Indian Reservation" for purposes of determining jurisdiction); *State v. Columbia George*, 39 Or. 127 (Or. 1901) (discussing a murder that occurred "by one Indian against another upon an Indian reservation, although within state boundaries, to the exclusion of the state courts"); *In re Fredenberg*, 65 F. Supp. 4, 6 (E.D. Wis. 1946) (discussing federal jurisdiction over designated crimes "when committed upon any Indian reservation").

This use of the phrase "upon any Indian reservation" demonstrates that the phrase often is used to refer to *any* conduct that occurs within an Indian reservation. A reasonable interpretation of the statute is therefore that the term "upon any Indian Reservation" refers

not to specific real property, but rather defines the geographic area within which the State has no authority to tax. As used in the other statutes and cases discussed above, this area is coterminous with the sovereign boundaries of each Indian Nation, which typically define the geographic limits of the state and Indian Nation's jurisdictional authority. When taken together with the Court's duty to read the statute in a light must favorable to the Indian Nation, as discussed below, the Court should read this phrase as construing a broad benefit to Indian Nations, reflecting the term's broadest definition as used by other courts.

IV. IF ANY AMBIGUITY EXISTS IN INDIAN LAW § 6, SUCH AMBIGUITY MUST BE CONSTRUED IN FAVOR OF THE PLAINTIFFS-APPELLANTS IN ACCORDANCE WITH WELL ESTABLISHED CANONS OF CONSTRUCTION.

Indian Law § 6 is unambiguous. However, even assuming the existence of an ambiguity in Indian Law § 6, the Appellate Division should have construed that Section's prohibition against assessing any taxes "for any purpose whatever, upon any Indian reservation in this state" in favor of the Plaintiffs-Appellants. *See County of Yakima*, 502 U.S. at 269; *see also Chaudhuri*, 802 F.2d at 288 ("statutes passed for the benefit of dependent Indian tribes are to be liberally construed,

doubtful expressions being resolved in favor of the Indians."). To the extent any ambiguity exists in Indian Law § 6, the Court must weigh that ambiguity in favor of the Indian tribe. Here, that requires that the Court interpret the ambiguity in Indian Law § 6 in favor of Mr. White and the Nations, and find that Indian Law § 6 creates a limitation on the State's ability to impose a tax, of any sort, including on a tribal business operating upon an Indian Reservation.

Moreover, pursuant to the doctrine *expressio unius est exclusio alterius*, the Appellate Division erred by expanding the scope of those items exempted from tax immunity under Indian Law § 6. It is a well-established canon of statutory construction that a court should not add or remove elements to a list of statutory or regulatory requirements. *See, e.g., Morales v. Cnty. of Nassau,* 94 N.Y.2d 218, 224-225 (1999) (invoking *expressio unius* maxim where statute provided "an extensive list of exemptions" to conclude that "an additional exemption" did not exist); *Jewish Home & Infirmary v. Comm'r of N.Y. State Dep't of Health*, 84 N.Y.2d 252, 262 (1994) (invoking maxim where "the Legislature has addressed [the] subject and . . . created a list of

exceptions to a general rule, but has chosen to omit mention of one exception in particular").

In its attempt to interpret the scope of Indian Law § 6, the Appellate Division improperly looked to chapter 45 of the Laws of 1857 as the source of Section 6's legislation. The court reasoned as follows: (1) since chapter 45 bans the assessment of taxes on "parcels" or "lots"; and (2) Indian Law §6 references chapter 45; then (3) Indian Law § 6 must also ban the assessment of taxes on real property; accordingly, (4) the State may assess taxes on the sale of cigarettes. This flawed reasoning is undercut directly by the *expressio unius* canon. The Court should interpret what the Legislature codified based solely on the words they chose to put in the statute. Indeed, the Legislature expressly repealed chapter 45. *See* Indian Law § 200. Had the Legislature wished to codify the connection between chapter 45 and Indian Law § 6, it had the opportunity to do so, but chose otherwise. Indeed, if Section 6 applied only to real property, there would be no need for Section 6 in addition to chapter 45. Accordingly, chapter 45 cannot be used to expand Indian Law § 6 to exempt cigarette sales from tax immunity.

Accordingly, since any ambiguity must be interpreted in favor of the Appellants, and because the Appellate Division improperly expanded the exceptions to tax immunity afforded the Plaintiffs-Appellants under Indian § 6, the decision and declaration of the Appellate Division must be reversed.

CONCLUSION

The language of Indian Law § 6 is clear and unambiguous. The unambiguous statute is fundamentally and irreconcilably inconsistent with Tax Law § 471. The Appellate Division's inquiry into the meaning of Indian Law § 6 should have ended with a reading of the plain text of Section 6. That court erred by reading into Indian Law § 6 a meaning that protected the State's economic interests 100 years after it was passed, and by failing to resolve any ambiguities in favor of the Plaintiffs-Appellants. In addition, the Appellate Division's analysis ignored the history and context of Indian Law § 6, including the other Indian Law statutes passed at the same time, which suggest that Indian Law § 6 applied to any tax within an Indian Reservation.

For these reasons, and for the reasons set forth in the White Brief, the Seneca Nation, Saint Regis Mohawk Tribe, and Shinnecock Indian

Nation respectfully request that this Court reverse the Appellate Division's decision and declaration.

DATED: Buffalo, New York
September 27, 2017

LIPPES MATHIAS WEXLER FRIEDMAN LLP

Carol E. Heckman, Esq.
Thomas J. Gaffney, Esq.
Attorneys for Seneca Nation of Indians, Saint Regis Mohawk Tribe, and Shinnecock Indian Nation
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
(716) 853-5100
checkman@lippes.com
ccooper@lippes.com

CERTIFICATION OF WORD COUNT

Pursuant to 22 NYCRR 500.11(m), the undersigned verifies that using the Microsoft Word "word count" tool, the word count for the *amicus curiae* brief field by the Seneca Nation of Indians, Saint Regis Mohawk Tribe and Shinnecock Indian Nation is 4,924 words.

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Respectfully submitted,

Lippes Mathias Wexler Friedman LLP

Carol E. Heckman, Esq.
Thomas J. Gaffney, Esq.
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
P: 716-853-5100
F: 716-853-5199
checkman@lippes.com
tgaffney@lippes.com